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One Third of the Nation's Land

A Report to the President and to the Congress by the Public Land Law Review Commission

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One Third of the Nation's Land

A Report to the President and to the Congress by the Public Land Law Review Commission

WASHINGTON, D.C.
June 1970

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IDENTICAL LETTERS TO:

THE PRESIDENT OF THE SENATE

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PUBLIC LAND LAW REVIEW COMMISSION

1730 K STREET, N.W.

WASHINGTON, D. C. 20006

June 20, 1970

The President
The White House
Washington, D.C.

Dear Mr. President:

We submit with pride the report of the Public Land Law Review Commission with our recommendations for policy guidelines for the retention and management or disposition of Federal lands that equal one-third of the area of our Nation.

The report is responsive to the provisions of Public Law 88–606 which established this Commission and charged us with specific responsibilities that are detailed in the Preface.

Our recommendations represent a broad consensus on both basic underlying principles and recommendations to carry them out. Although we represent diverse views and backgrounds, we were able to adjust our ideas, objectively consider the problems, and achieve this general agreement. In a few instances, individual members have set forth their separate views. Because this is a consensus report, however, the absence of a member's separate views does not necessarily indicate that there is unanimity on the details.

The Commission's recommendations will support early implementation through Executive and legislative action to assure equitable treatment of our citizens and make the public land laws of the United States and their administration simpler, more effective, and, in accordance with the criterion of the policy objective set forth in the Commission's Organic Act, truly for the maximum benefit for the general public.

Respectfully,

Wayne N. Aspinall
Chairman

Gordon Allott

Paul J. Fannin

H. Byron Mock
Vice Chairman

Clinton P. Anderson

Maurice K. Goddard

Laurance S. Rockefeller

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* Served from inception until January 1965; reappointed in January 1967.

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Listed above is the professional staff as constituted in August 1969, when reduction of that staff was initiated, together with the subprofessional and stenographic and clerical personnel on the staff at the time this report was completed.

Harry L. Moffett served as Assistant Director (Administration) from October 1966 to July 1969, and Leland O. Graham, Arthur D. Smith, and Max M. Tharp made significant contributions as members of the staff prior to August 1969.

The Act establishing the Commission provides for an Advisory Council consisting of Federal liaison officers from departments and agencies having an interest in or responsibility for the retention, management, or disposition of the public lands and 25 other members representative of various major citizen groups interested in problems relating to the retention, management, and disposition of the public lands. The following persons are either now on the Advisory Council or served on it previously.

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Director
Real Property Management

Department of Justice
Shiro Kashiwa
Assistant Attorney General
Land and Natural Resources

Department of the Interior
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Orlo E. Childs
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State of Washington
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Clearwater & Potlatch Timber Protective Associations
Orofino, Idaho

E. K. Davis
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Charles H. W. Foster
Needham, Massachusetts

* Former Under Secretary of the Interior. Acted as Liaison Member of Council representing Department of the Interior.

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Chairman
Public Lands Committee
American Mining Congress
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C. R. Gutermuth
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Wildlife Management Institute
Washington, D. C.

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Vice President and General Counsel
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Senior Vice President
National Coal Association
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Natural Resources Department
American Farm Bureau Federation
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Battle Mountain, Nevada

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Bruce Renwick
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Los Angeles, California

Fred Smith
Businessman and Trustee
Jackson Hole Preserve, Inc.
New York, New York

H. A. True, Jr.
Chief Executive Officer
True Oil Company
Casper, Wyoming

Michael F. Widman, Jr.
Director
Research and Marketing Dept.
United Mine Workers of America
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(Titles indicate affiliation at time of membership on Council)

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John A. Baker
Assistant Secretary
Department of Agriculture

Victor Fischer
Assistant Administrator
Housing and Home Finance Agency

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THE SYSTEM of private land ownership in most of the states can be traced to the public land system developed after the Revolutionary War. In order to form and maintain the Union, those states asserting claims west of their traditional boundaries ceded their interests to the National Government. This Federal public domain grew as the Nation's sovereignty became established across the continent.

Contrary to the traditions of sovereigns elsewhere in the world, the United State disposed of much of the land at nominal prices and encouraged private ownership. At the same time, in order to promote the common school system and, later, institutions of higher learning, Congress granted substantial acreages to new states as they were formed.

In two years, the Nation will celebrate the 100th anniversary of the establishment of Yellowstone as the first national park, when Americans became aware that some of the rare public domain should be set aside and dedicated to provide for their enjoyment, ". . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." [1]

Although the National Government provided for the reservation of forest resources in 1891 and subsequently set aside other lands for various purposes, the emphasis continued on disposal well into this century as detailed in the *History of Public Land Law Development,* prepared for this Commission as part of its study program.[2]

Despite the fact that controversy surrounded the establishment of many different types of programs on public domain lands, Professor Gates, in the *History* referred to above, came to the following conclusion:

> Many Americans take great pride in the national parks, enjoy the recreational facilities in the national forests, and in large numbers tour the giant dams and reservoirs of the Reclamation Service. National pride in the possession and enjoyment of these facilities seems to be displacing the earlier views.

The increased demand for the use of the public lands during and after World War II gave rise to a need for new management and disposal tools concerning the public lands. The inability of Congress and the administrators of public lands to resolve all the conflicting demands being made on the lands led to a multitude of suggestions for various amendments or additions to the body of public land laws. The interrelationships among all segments of public land law led to the conclusion that a broad review should be undertaken in order to assure that no facet of public land policy was being overlooked.

In reporting out the legislation which resulted in the establishment of the Public Land Law Review Commission, both of the committees of Congress that were involved stated:

> It is the considered opinion of the committee that the necessary comprehensive study required of the public land laws cannot be carried out successfully by this committee acting alone. The committee believes that due to the many and varied factors, considerations, and interests involved, only a bipartisan commission supplemented by an advisory council made up of the many interested users of the public lands would be in a position to coordinate and supervise effectively such a broad study.
>
> H.R. 8070, if enacted as amended, will establish such a bipartisan commission to conduct a review of existing public land laws and regulations and recommend revisions necessary therein. The commission and its staff would be assisted by liaison officers from Federal agencies with a direct interest.[3]

The Commission as established is comprised of 19 members: Six appointed by the Speaker of the House of Representatives and six appointed by the President of the Senate, equally divided between the two major parties from among the membership of the respective Committees on Interior and Insular Affairs; six appointed by the President of the United States from persons outside of the Federal Government; and a Chairman elected by the 18 appointed members.

The full text of the statute creating the Commission appears in Appendix A to this report.[4] Certain salient provisions must, however, be kept in mind:

1. Section 10 of the Commission's Organic Act defines as follows the lands concerning which the Commission was charged with responsibility for making recommendations:

> As used in this Act, the term "public lands" includes (a) the public domain of the United States, (b) reservations, other than Indian reservations, created from the public domain, (c) lands permanently or temporarily withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws, including the mining

[1] 16 U.S.C. § 1 (1964).

[2] Paul Wallace Gates and Robert W. Swensen, *History of Public Land Law Development.* PLLRC Study Report, 1968.

[3] H. R. Rep. No. 1008, 88th Cong., 1st Sess. 8 (1964); S. Rep. No. 1444, 88th Cong., 2d Sess. 5 (1964).

[4] 43 U.S.C. §§ 1391–1400 (1964) *as amended,* (Supp. IV, 1969).

laws, (d) outstanding interests of the United States in lands patented, conveyed in fee or otherwise, under the public land laws, (e) national forests, (f) wildlife refuges and ranges, and (g) the surface and subsurface resources of all such lands, including the disposition or restriction on disposition of the mineral resources in lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf.

Only Indian reservations were, therefore, excluded from consideration.[5] The Commission thus generally examined matters pertaining not only to the lands included within the definition of its Act, but also to lands that are managed in conjunction with defined public lands, or that have characteristics similar to them.

Of the 2.2 billion acres of land within the United States, the Federal Government owns 755.3 million acres, of which 724.4 million acres are specifically within the definition of lands concerning which the Commission is charged with the responsibility of making recommendations. As discussed in this report, there are both known and unknown values in these lands. This Commission never lost sight of the potential significance that its recommendations might have because of these values.

2. The Commission was charged with making a "comprehensive review of [public land] laws, and the rules and regulations promulgated thereunder" as well as "the policies and practices of the Federal agencies charged with administrative jurisdiction over [public] lands insofar as such policies and practices relate to the retention, management, and disposition of those lands" in order "to determine whether and to what extent revisions thereof are necessary." This broad charter meant that the Commission was required to do much more than codify existing statutes. Although it is a *law* review commission, its members recognized that the laws could not be reviewed under the above-quoted statutory language without having a comprehensive examination of the lands and their resources, as well as the uses and potential uses.

3. The Act requires the Commission to "compile data necessary to understand and determine the various demands on the public lands which now exist and which are likely to exist within the foreseeable future."

The Commission's work was based on a determination that the year 2000 is the limit of *its* "foreseeable future." Such data were compiled and were referred to as the Commission made decisions.

4. The Commission is then charged with the responsibility of recommending "such modifications in existing laws, regulations, policies, and practices as will, in the judgment of the Commission, best serve to carry out the policy" that the "public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public." (§§ 4, 1)

The Commission held its organizational meeting in Washington, D. C. on July 14, 1965, at which time it elected unanimously Representative Wayne N. Aspinall (D-Colo.) as Chairman; a Presidential appointee, H. Byron Mock, as Vice Chairman; and Milton A. Pearl as Director. The Director was charged with the responsibility of assembling a staff and formulating a program that would produce all the information and data necessary as a foundation for the Commission's deliberations, conclusions, and recommendations.

The Commission then chose 25 members of the Advisory Council to be, in the words of the statute, "representative of the various major citizens' groups interested in problems relating to the retention, management, and disposition of the public lands," to whom were added liaison officers appointed by the heads of Federal departments and agencies which have an interest in or responsibility for the retention, management, or disposition of the public lands.[6]

Thereafter, each of the Governors of the 50 states, in response to an invitation from the Chairman, designated a representative to work with the Commission, its staff, and the Advisory Council.[7]

The first meeting of the Advisory Council, with the Governors' Representatives participating, was held on March 24, 1966. In June of the same year, the Commission held the first of a series of public meetings designed to obtain the views of all interested persons and groups. During the course of those meetings, which were held throughout the country, over 900 witnesses presented statements that were helpful in focusing attention on problems and their possible solutions.[8]

The meetings of the Advisory Council with the Governors' Representatives participating and the presentations by members of the public contributed substantially to the Commission's understanding of the impacts of public land laws, policies, practices, and procedures.

The Commission is indebted particularly to members of the Advisory Council and the Governors' Representatives for their dedicated service in providing comments and recommendations. The members and staff of the Commission benefited from

[5] The United States holds legal title to Indian reservation lands for the benefit of the Indians. A body of law has developed for these lands wholly separate from those commonly termed public land laws. For these reasons, Indian reservations were specifically excluded from the Commission's study by the Act establishing the Commission.

[6] A listing of the Advisory Council appears on page vi.

[7] A listing of the Governors' Representatives appears in Appendix C.

[8] See Appendix D, Attachment No. 3, for a listing of the public meetings.

their knowledge and insights throughout their work. These people were not advisors in name only—the Commission asked for and obtained their advice, which was then referred to frequently during the Commission's deliberations.

As one of its main objectives at the outset, the Commission undertook the task of establishing some principles or criteria that could furnish help in judging whether retention and management, or disposition, would provide the maximum benefit for the general public. The Commission recognized that it would be impossible to establish scientific criteria and that, in any event, much judgment would be required.

Considering the scope of this task, the Commission believes it has been successful. As brought out in the report, the Commission agreed upon a checklist of the justifiable interests affected by public land policy that permitted it (and that it believes will be helpful to future policymakers and administrators) to arrive at conclusions and recommendations which, after taking all factors into consideration, will meet the test of providing the maximum benefit for the general public.

In response to the requirement that it develop background data, the Commission's staff designed a research program embracing 33 individual subjects, on each of which manuscripts were prepared as one source of information for Commission consideration. A discussion of the research program is included in the appendix.[9]

Although thereafter the Commission discussed with the Advisory Council and the Governors' Representatives, as well as in executive session, material on a subject-by-subject basis, it never lost sight of the concept that it was necessary for one group in one place at one time to look at all the public land laws and policies, as well as their interrelationships. This the Commission did as it went along.

For the purposes of our review and report, the Commission considered all the resources and uses of the public lands to be commodities. Accordingly, in addition to the traditional resources of minerals, timber, forage, intensive agriculture, water, and fish and wildlife, there were included outdoor recreation and the various spatial uses such as for residential, commercial, and industrial purposes.

The impact that the use or development of each commodity has on other commodities, was considered. The Commission also considered to what extent, if any, the commodity would affect the environment so that, where appropriate, recommendations could be made to alleviate any adverse effect.

The Commission also examined several other factors that are common to all the commodities. These are pricing or fees to be charged, objectives or goals in providing and supplying the commodities, investment and financing by both the Federal Government and the user, questions of allocation of either the resource base for production of the commodity or of the commodity to users, and finally, whether lands that are chiefly valuable for a particular purpose should be retained and managed in Federal ownership or disposed of either to another public body or into private ownership. As to those lands the Commission proposes be retained, the management policies that should be adopted were considered.

It is not intended by the foregoing to suggest that these were the only policy matters given consideration. Quite the contrary is true and policy matters peculiar to individual commodities were considered in connection with each such commodity.

In addition, at the final meeting of the Advisory Council with the Governors' Representatives participating, the Commission conducted a complete review of suggestions of how to determine guidelines concerning which lands should be retained and managed and which lands should be disposed of, all in a manner to provide the maximum benefit for the general public.

The comprehensive research program conducted by and under the supervision of the staff, examined each and every public land law as well as the regulations, practices and procedures involved in their administration. However, throughout its work, the Commission took a broad approach to matters of policy and did not consider the subject before it in a law by law review. Nor have we attempted to identify in our recommendations all of the inconsistent laws that should be repealed or possibly modified upon adoption of our recommendations. Where we have not recommended repeal or modification of specific statutes, the recommendation is implicit if the action we propose is inconsistent with existing law.

The Digest of Public Land Laws, prepared as part of the research program set forth in Attachment No. 4, Appendix D, will be of considerable aid to the Congressional Committees in ascertaining the laws that are affected by the Commission's recommendations. It will be up to the Congress in framing new legislation, in those instances where an entire law would not be rendered obsolete, to determine whether there should be an amendment to or replacement of existing law. The probability is that upon adoption of this Commission's recommendations, no public land law will be left intact.

We note, however, that many of the Commission's recommendations can be implemented by administrative action in the executive branch. We have been

[9] Attachment No. 4, Appendix D.

pleased and encouraged by the responsiveness of land management agencies to possibilities for change that were suggested during the course of our review, either by our official advisors, citizens at meetings, or by the study reports. Some of these changes have been instituted, and we understand that others are under active consideration on the basis of material developed by or for us and without awaiting study of the Commission's specific recommendations.

With the various interests—private and public, Federal as well as non-Federal—represented in the advisory groups, and with the diverse political, social, and economic backgrounds of the Commissioners, taken together with the comprehensive studies prepared by or under the direction of the staff, as well as the several thousand views received at meetings and otherwise from members of the public, the Commission believes that all factors have been given consideration in the making of its final decisions. All the members of the Commission, including those who are legislators, have looked beyond the narrow requirements of their constituencies, affiliations, and associations to judge the public weal.

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cover photograph by Leland Prater

A Program for the Future

An introductory summary of the Commission's basic concepts and recommendations for long-range goals, objectives, and guidelines, underlying the more specific recommendations in the individual chapters of the report.

FEELING THE PRESSURES of an enlarging population, burgeoning growth, and expanding demand for land and natural resources, the American people today have an almost desperate need to determine the best purposes to which their public lands and the wealth and opportunities of those lands should be dedicated. Through the timely action of Congress, and through the work of this Commission, a rare opportunity is offered to answer that need.

For reasons that we will detail, we urge reversal of the policy that the United States should dispose of the so-called unappropriated public domain lands. But we also reject the idea that merely because these lands are owned by the Federal Government, they should all remain forever in Federal ownership.

We have also found that by administrative action the disposal policy, although never "repealed" by statute, has been rendered ineffective. In the absence of congressional guidelines, there has been no predictable administrative policy.

We, therefore, recommend that:

> The policy of large-scale disposal of public lands reflected by the majority of statutes in force today be revised and that future disposal should be of only those lands that will achieve maximum benefit for the general public in non-Federal ownership, while retaining in Federal ownership those whose values must be preserved so that they may be used and enjoyed by all Americans.

While there may be some modest disposals, we conclude that at this time most public lands would not serve the maximum public interest in private ownership. We support the concepts embodied in the establishment and maintenance of the national forests, the National Park System, the National Wildlife Refuge System, and the parallel or subsidiary programs involving the Wilderness Preservation System, the National Riverways and Scenic Rivers Systems, national trails, and national recreation areas.

In recent years, with very few exceptions, all areas that have been set aside for specific use have been given intensive study by both the legislative and executive branches and have been incorporated in one of the programs through legislative action. We would not disturb any of these because they have also been subjected to careful scrutiny by state and local governments as well as by interested and affected people.

Based on our study, however, we find that, generally, areas set aside by executive action as national forests, national monuments, and for other purposes have not had adequate study and there has not been proper consultation with people affected or with the units of local government in the vicinity, particularly as to precise boundaries. Although the Department of the Interior and the Bureau of Land Management classified lands under the temporary Classification and Multiple Use Act of 1964,[1] we believe that in many cases there was hasty action based on preconceived determinations instead of being based on careful land use planning. In addition, there are many areas of the public domain

[1] 43 U.S.C. §§ 1411–1418 (1964).

that have never been classified or set aside for specific use.*

We, therefore, recommend that:

> An immediate review should be undertaken of all lands not previously designated for any specific use, and of all existing withdrawals, set asides, and classifications of public domain lands that were effected by Executive action to determine the type of use that would provide the maximum benefit for the general public in accordance with standards set forth in this report.

The result of these reviews will be the delineation of lands that should be retained in Federal ownership and those that could best serve the public through private ownership. For those to be retained in Federal ownership, there will be a further breakdown indicating which ones should be set aside for special-purpose use—which may or may not include several different uses.

As intimated above, our studies have also led us to the conclusions that the Congress has largely delegated to the executive branch its plenary constitutional authority over the retention, management, and disposition of public land; [2] that statutory delegations have often been lacking in standards or meaningful policy determinations; that the executive agencies, understandably, in keeping with the operation of the American political system, took the action they deemed necessary to fill this vacuum through the issuance of regulations, manuals, and other administrative directives; and that the need for administrative flexibility in meeting varying regional and local conditions created by the diversity of our public lands and by the complexity of many public land problems does not justify failure to legislate the controlling standards, guidelines, and criteria under which public land decisions should be made.

[2] U.S. Const., Art. IV, § 3.

* Commissioner Clark submits the following separate view: Some of the statements in this and other parts of the report may lead to interpretations in the minds of some readers which do not represent views of all members of the Commission. However, since this is a consensus effort, a brief caveat is appropriate regarding the language and subjective tone employed to describe some past actions affecting public lands which should not detract from the general utility of the recommendations. This report must be read against nearly 200 years of history and no doubt a nongovernment report would contain similar inferences that would emphasize perhaps disproportionately the past inaction, delays, and piecemeal approach of Congress.

We, therefore, recommend that:

> Congress should establish national policy in all public land laws by prescribing the controlling standards, guidelines, and criteria for the exercise of authority delegated to executive agencies.

Many types of public land have been reserved by executive action for governmental uses, such as defense installations and atomic energy testing areas. The result has been to materially restrict or preclude their availability for recreation and resource development purposes. In other cases, withdrawals and reservations have severely limited permissible types of uses on tremendous acreages of public land in order to further administrative land policies.

We find that when proposed land uses are passed on by the Congress, they receive more careful scrutiny in the executive branch before being recommended; furthermore, in connection with congressional action, the general public is given a better opportunity to comment and have its views considered. We conclude that Congress should not delegate broad authority for these types of actions.

We, therefore, recommend that:

> Congress assert its constitutional authority by enacting legislation reserving unto itself exclusive authority to withdraw or otherwise set aside public lands for specified limited-purpose uses and delineating specific delegation of authority to the Executive as to the types of withdrawals and set asides that may be effected without legislative action.

Our studies have convinced us that, with respect to lands retained in Federal ownership, the rules and regulations governing their use, to the extent that they exist, have not been adequate to fulfill the purpose; that they were promulgated without proper consultation with, and participation by, either those affected or the general public; that existing regulations are cumbersome; and that the procedures for users or other interested parties to exercise their rights to seek or oppose the grant of interests in public land are likewise cumbersome as well as expensive with no assurance of objective, impartial consideration of appeals from, or objections to, decisions by land managers.

We, therefore, recommend that:

> Public land management agencies should be required by statute to promulgate comprehensive rules and regulations after full consideration of all points of view, including

protests, with provisions for a simplified administrative appeals procedure in a manner that will restore public confidence in the impartiality and fairness of administrative decisions. Judicial review should generally be available.

In pursuing our work, we took cognizance of the fact that between 1965, when we started our work, and the year 2000, the population of the United States will have grown by over 100 million people. The public lands can, must, and will contribute to the well-being of our people by providing a combination of many uses. Some of these will help to take care of the increasing leisure time that Americans of the future will have, while others must help in furnishing the added amounts of food, fiber, and minerals that the larger numbers of people will require.

Under existing statutes and regulations, there is no assurance that the public lands retained in Federal ownership will contribute in the manner that will be required. We find that the absence of statutory guidelines leaves a void which could result in land managers withholding from public use public lands or their resources that may be required for a particular time; that even if land managers plan to make specific goods and services available to the public, there are no long-range objectives or procedures that will assure fulfillment of a program; and that the absence of statutory guidelines for the establishment of priorities in allocating land uses causes unnecessary confusion and inconsistent administration.

We, therefore, recommend that:

> Statutory goals and objectives should be established as guidelines for land-use planning under the general principle that within a specific unit, consideration should be given to all possible uses and the maximum number of compatible uses permitted. This should be subject to the qualification that where a unit, within an area managed for many uses, can contribute maximum benefit through one particular use, that use should be recognized as the dominant use, and the land should be managed to avoid interference with fulfillment of such dominant use.

Throughout our work we were aware of the ever-growing concern by the American people about the deterioration of the environment. We share that concern and have looked in vain to find assurance in the public land laws that the United States, as a landowner, had made adequate provision to assure that the quality of life would not be endangered by reason of activities on federally owned lands. We find to the contrary that, despite recent legislative enactments, there is an absence of statutory guidelines by which land management agencies can provide uniform, equitable, and economically sound provision for environmental control over lands retained in Federal ownership.

We, therefore, recommend that:

> Federal statutory guidelines should be established to assure that Federal public lands are managed in a manner that not only will not endanger the quality of the environment, but will, where feasible, enhance the quality of the environment, both on and off public lands, and that Federal control of the lands should never be used as a shield to permit lower standards than those required by the laws of the state in which the lands are located. The Federal licensing power should be used, under statutory guidelines, to assure these results.

Every landowner is concerned with the return that he receives for the use of his land or for the revenue he receives from products produced on that land. United States citizens, collectively the owners of the public lands, are similarly concerned. We ascertained from the many witnesses that we heard that the concern of some is that the United States has not been receiving the maximum dollar return; the concern of others is that the United States has been trying to receive too much of a dollar return; while the concern of still others is that the United States is uneven in its efforts to obtain monetary return from its public lands.

From our review, we find that there is a great diversity in public land policy on fees and charges for the various goods and services derived from the public lands; that the fee structures vary among commodities and among agencies administering the public lands; that objectives for the pricing of goods and services are unclear; and that the absence of comprehensive statutory guidelines has created a situation in which land managers are unable to provide uniform equitable treatment for all.

We, therefore, recommend that:

> Statutory guidelines be established providing generally that the United States receive full value for the use of the public lands and their resources retained in Federal ownership, except that monetary payment need not represent full value, or so-called market value, in instances where there is no consumptive use of the land or its resources.

Many of those who appeared before the Commission testified to the drastic results that sometimes flow from the uncertainty of tenure and the insecurity of investment of public land users. Studies prepared for the Commission confirm this, despite the fact that not only individuals and companies but many communities are wholly or partially dependent for their economic life on the public lands and their resources.

We, therefore, recommend that:

> Statutory provision be made to assure that when public lands or their resources are made available for use, firm tenure and security of investment be provided so that if the use must be interrupted because of a Federal Government need before the end of the lease, permit, or other contractual arrangement, the user will be equitably compensated for the resulting losses.

The United States need not seek to obtain the greatest monetary return, but instead should recognize improvements to the land and the fact that the land will be dedicated, in whole or in part, to services for the public as elements of value received.

Having determined that there should be no wholesale disposition of the public lands, we turned our attention to the impact that the retention in Federal ownership would have on other levels of government. In doing this, we made an intensive review of existing programs.

Revenue-sharing programs were established for the purpose of compensating state and local governments for the fact that certain types of lands would not be going into private ownership and, therefore, onto the tax rolls. Nonetheless, we find that such programs actually have no relationship to the burdens imposed on state and local governments by the retention of public lands in Federal ownership. The continuation of the general United States policy of providing for transfer to private ownership of virtually all of the public lands would not have required consideration of a comprehensive program to compensate state and local governments for the burdens imposed by Federal ownership of public lands since such ownership was then transitory. The establishment of new programs in recent years and the administration of the public land laws generally has resulted in millions of acres of land being set aside for permanent retention by the Federal Government throughout the 50 states with concomitant unpredicted burdens on state and local governments. The potential retention of additional millions of acres of public domain lands as a result of the review recommended by this Commission requires that we reexamine the obligations and responsibilities of the United States as a landowner in relation to state and local governments upon which continuing burdens will be placed. We find further that any attempt to tie payments to states and local governments to receipts generated from the sale or use of public lands or their resources causes an undue emphasis to be given in program planning to the receipts that may be generated.

We, therefore, recommend that:

> The United States make payments in lieu of taxes for the burdens imposed upon state and local governments by reason of the Federal ownership of public lands without regard to the revenues generated therefrom. Such payments should not represent full tax equivalency and the state and local tax effort should be a factor in determining the exact amount to be paid.

The statute establishing the Public Land Law Review Commission stated that, "those laws, or some of them, may be inadequate to meet the current and future needs of the American people." [3] Our review has led us to the conclusion that the laws are indeed inadequate, first, because of the emphasis on disposition, second, because of the absence of statutory guidelines for administration, as discussed above, and third, because the disposition laws themselves are obsolete and not geared to the present and future requirements of the Nation. With the exception of the temporary Public Land Sale Act,[4] which will expire 6 months after submission of the final report by this Commission, there is no statute permitting the sale of public domain lands in any large tracts for residential, commercial, or industrial use, and we find that the statute for the sale of small tracts has not worked well.

Accordingly, we find that it is necessary to modify or repeal all of the public domain disposition laws and replace them with a body of law that will permit the orderly disposition of those lands that can contribute most to the general welfare by being placed in private ownership.

We, therefore, recommend that:

> Statutory authority be provided for the sale at full value of public domain lands required for certain mining activities or where suitable only for dryland farming, grazing of

[3] 43 U.S.C. § 1392 (1964).
[4] 43 U.S.C. § 1421–1427 (1964).

domestic livestock, or residential, commercial, or industrial uses, where such sale is in the public interest and important public values will not thereby be lost.

In the mid-1860's, statutory provision was made for the use of public lands as sites for new towns.[5] Our studies reveal that relatively few new towns are established on public lands through the townsite laws.

We find that the need for the establishment of new towns to provide for a portion of the anticipated population growth and the parallel growth of industry by the year 2000 will be, realistically, challenging and difficult to fulfill. Compounding the problem are the mounting difficulties facing the large existing cities. While we find that the problems of urban areas cannot be solved by transplanting large numbers of people to the public land areas, we also find that the public lands offer an opportunity for the establishment of at least some of the new cities that will be required in the next 30 years, and that, in many instances, they offer the only opportunity for the expansion of existing communities.

We, therefore, recommend that:

Legislation be enacted to provide a framework within which large units of land may be made available for the expansion of existing communities or the development of new cities.

Until some experience has been gained in the various mechanisms that might be utilized and a national policy adopted concerning the establishment of new cities generally, Congress should consider proposals for the sale of land for new cities on a case-by-case basis.

Our inquiries and studies have revealed that there are many instances where all concerned will agree that public domain land previously incorporated within a national forest could best serve the public interest by being transferred to private ownership. We find, however, that the present procedures for the accomplishment of such transfer, requiring as they do an exchange for other lands, are cumbersome, administratively burdensome, and unnecessarily expensive to both the Government and the private party, inordinately time consuming, and result in the acquisition of land that may not, in fact, be needed by the United States any more than the land of which it is disposing through the exchange process.

[5] 43 U.S.C. § 711 et seq. (1964).

We, therefore, recommend that:

Statutory authority be granted for the limited disposition of lands administered by the Forest Service where such lands are needed to meet a non-Federal but public purpose, or where disposition would result in the lands being placed in a higher use than if continued in Federal ownership.

The administration of some programs, such as recreation, can be accomplished just as well, if not better, by state and local government units; in other instances, Federal public lands are required for construction of schools and other buildings that provide state or local government services.

We find that it is in the best interest of all concerned to encourage state and local governments to assume complete responsibility for the maximum number of programs that those levels of government can and will administer and to acquire title to the required land in order to permit the proper level of investment to be made.

We, therefore, recommend that:

Legislation be enacted to provide flexible mechanisms, including transfer of title at less than full value, to make any federally owned lands available to state and local governments when not required for a Federal purpose if the lands will be utilized for a public purpose.

Throughout our studies and inquiries, we compared the policies, practices, and procedures applicable to the public lands as defined in the statute establishing the Public Land Law Review Commission with the policies, practices, and procedures applicable to other types of lands where such other lands were managed in conjunction with or had characteristics similar to public lands concerning which this Commission was charged with responsibility of making recommendations. We also take note of the fact that within the definition of lands in our Organic Act, there are both "public domain" and "acquired" lands as discussed elsewhere in this report.

We find that there is no logical basis for distinguishing between public domain and acquired lands or between lands defined as "public lands" and all other federally owned lands.

We, therefore, recommend that:

Generally, in both legislation and administration, the artificial distinctions between pub-

lic domain and acquired lands of the Federal Government should be eliminated.

We find that the division of responsibility for the development of policy and the administration of public lands among Congressional Committees and several Federal departments and agencies has led to differences, contradictions, and duplications in policies and programs. Not only have these factors been administratively burdensome, but they have also been the source of confusion to citizens dealing with the Government.

We, therefore, recommend that:

Responsibility for public land policy and programs within the Federal Government in both the legislative and executive branches should be consolidated to the maximum practicable extent in order to eliminate, or at least reduce, differences in policies concerning the administration of similar public land programs.

We submit the foregoing findings and basic recommendations as a statement of principles that should govern the retention and management or disposition of federally owned lands. In the chapters that follow, we will develop detailed background in specific subject areas, along with more detailed recommendations designed to implement the basic principles enunciated in the foregoing recommendations.

In arriving at these recommendations and those that follow, we made each decision on the basis of what we consider to be the maximum benefit for the general public, in accordance with the statutory charge to the Commission as cited in the Preface.

We have not defined in any one place what we consider to be "the maximum benefit for the general public." Nor have we defined a set of criteria that will lead all persons to the same conclusion as to what is the maximum benefit for the general public. These are tasks that are perhaps best left to sociologists, philosophers, and others. But, we did study the problem and found, in the end, that our work was eased and made more meaningful by adopting a convenient categorization of broadly justifiable, unexceptionable, yet often conflicting, interests within the totality of the general public.

Obviously, the general public is made up of many persons and groups with conflicting aims and objectives. Stated another way, it may be said that there are several "publics" which, in the aggregate, make up the general public with respect to policies for the public lands. Perhaps this categorization of identifiable interests would be useful in other areas of public policy, too. In any case, we found it useful in our work and applied it to all of our decisions. The six categories of interests we recognized are:

—*the national public:* all citizens, as taxpayers, consumers, and ultimate owners of the public lands are concerned that the lands produce and remain productive of the material, social, and esthetic benefits that can be obtained from them.

—*the regional public:* those who live and work on or near the vast public lands, while being a part of and sharing the concerns of the national public, have a special concern that the public lands help to support them and their neighbors and that the lands contribute to their overall well-being.

—*the Federal Government as sovereign:* the ultimate responsibility of the Federal Government is to provide for the common defense and promote the general welfare and, in so doing, it should make use of every tool at its command, including its control of the public lands.

—*the Federal Government as proprietor:* in a narrower sense, the Federal Government is a landowner that seeks to manage its property according to much the same set of principles as any other landowner and to exercise normal proprietary control over its land.

—*state and local government:* most of the Federal lands fall within the jurisdiction limits of other levels of governments, which have responsibility for the health, safety, and welfare of their constituents and, thus, an interest in assuring that the overriding powers of the Federal Government be accommodated to their interests as viable instruments in our Federal system of government.

—*the users of public lands and resources:* users, including those seeking economic gain and those seeking recreation or other noneconomic benefits, have an interest in assuring that their special needs, which vary widely, are met and that all users are given equal consideration when uses are permitted.

The Commission in each of its decisions gave careful consideration to the interests of each of the several "publics" that make up the "general public." Distinguishing among these interests required that the Commission specifically consider each of them and, thus, assure that the decisions of the Commission, to the best of its ability, reflect all of the interests of the general public.

In applying the procedure that we did, in each case it was possible to see which interest is affected most. This is not only useful in the decisionmaking process but provides a healthy atmosphere in which all parties

interested can be assured that consideration has been given to them.

We, therefore, recommend that:

> In making public land decisions, the Federal Government should take into consideration the interests of the national public, the regional public, the Federal Government as the sovereign, the Federal proprietor, the users of public lands and resources, and the state and local governmental entities within which the lands are located in order to assure, to the extent possible, that the maximum benefit for the general public is achieved.

Premises

Fundamental premises are beliefs set forth in the foregoing underlying principles as well as in the implementing recommendations that follow. These are:

1. *Functioning of Government in a manner that reflects the principles set forth in the Constitution.*

In adhering to this principle, we seek to give recognition particularly to these specific principles:

—Congress, elected by and responsive to the will of the people, makes policy; the executive branch administers the policy.

—Maintenance of a strong Federalism. The Federal Government not only recognizes the importance of state and local governments in the Federal system but affirmatively supports and strengthens their roles to the maximum extent possible.

—The Federal Government protects the rights of individual citizens and assures that each one is dealt with fairly and equitably.

2. *Balancing of all major interests in order to assure maximum benefit for the general public.*

—No one of the interests we have identified should benefit to the unreasonable detriment of another unless there is an overriding national interest present.

3. *Providing responsible stewardship of the public lands and their resources.*

—Environmental values must be protected as major permanent elements of public land policy.

—Public lands must be available to meet a diversity of expanding requirements without degradation of the environment and, where possible, enhancement of the environment.

—Better planning will provide increased efficiency in the allocation of resources and the investment of funds.

—Guidelines must be established to provide for priorities in reducing conflicts among users and resolving conflicts when they arise.

4. *In addition to serving national requirements, the public lands must serve regional and local needs.*

—In many areas, consideration must be given to dependence of regional and local social and economic growth upon public lands and land policy.

—In planning the use of public lands, the uses of nonpublic lands must be given consideration.

Summary

ONE HUNDRED THIRTY-SEVEN specific recommendations are set forth below, as they appear and as they are numbered consecutively beginning in Chapter 3 and concluding in Chapter 20.[1] Not included here are (1) the basic principles set forth in A Program for the Future as underlying the detailed recommendations elsewhere in the Report, and (2) the unnumbered recommendations, which appear in italics within the various chapters subsidiary to the ones here set forth.

Chapter Three (Planning Future Public Land Use):

1. Goals should be established by statute for a continuing, dynamic program of land use planning. These should include:

Use of all public lands in a manner that will result in the maximum net public benefit.

Disposal of those lands identified in land use plans as being able to maximize net public benefit only if they are transferred to private or state or local governmental ownership, as specified in other Commission recommendations.

Management of primary use lands for secondary uses where they are compatible with the primary purpose for which the lands were designated.

Management of all lands not having a statutory primary use for such uses as they are capable of sustaining.

Disposition or retention and management of public lands in a manner that complements uses and patterns of use on other ownership in the locality and the region. *Page 42.*

2. Public land agencies should be required to plan land uses to obtain the greatest net public benefit. Congress should specify the factors to be considered by the agencies in making these determinations, and an analytical system should be developed for their application. *Page 45.*

3. Public lands should be classified for transfer from Federal ownership when net public benefits would be maximized by disposal. *Page 48.*

4. Management of public lands should recognize the highest and best use of particular areas of land as dominant over other authorized uses. *Page 48.*

5. All public land agencies should be required to formulate long range, comprehensive land use plans for each state or region, relating such plans not only to internal agency programs but also to land use plans and attendant management programs of other agencies. Specific findings should be provided in their plans, indicating how various factors were taken into account. *Page 52.*

6. As an essential first step to the planning system we recommend, Congress should provide for a careful review of (1) all Executive withdrawals and reservations, and (2) BLM retention and disposal classifications under the Classification and Multiple Use Act of 1964. *Page 52.*

7. Congress should provide authority to classify national forest and BLM lands, including the authority to suspend or limit the operation of any public land laws in specified areas. Withdrawal authority should no longer be used for such purpose. *Page 53.*

8. Large scale, limited or single use withdrawals of a permanent or indefinite term should be accomplished only by act of Congress. All other withdrawal authority should be expressly delegated with statutory guidelines to insure proper justification for proposed withdrawals, provide for public participation in their consideration, and establish criteria for executive action. *Page 54.*

9. Congress should establish a formal program by which withdrawals would be periodically reviewed and either rejustified or modified. *Page 56.*

10. All Executive withdrawal authority, without limitation, should be delegated to the Secretary of the Interior, subject to the continuing limitation of existing law that the Secretary cannot redelegate to anyone other than an official of the Department appointed by the President, thereby making the exercise of this authority wholly independent of public land management operating agency heads. *Page 56.*

11. Provision should be made for public participation in land use planning, including public hearings on proposed Federal land use plans, as an initial step in a regional coordination process. *Page 57.*

12. Land use planning among Federal agencies should be systematically coordinated. *Page 60.*

13. State and local governments should be given

[1] There are no recommendations in Chapters One and Two.

an effective role in Federal agency land use planning. Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state or local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning. *Page 61.*

14. Congress should provide additional financial assistance to public land states to facilitate better and more comprehensive land use planning. *Page 63.*

15. Comprehensive land use planning should be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act of 1965. Such commissions should come into existence only with the consent of the states involved, with regional coordination being initiated when possible within the context of existing state and local political boundaries. *Page 64.*

Chapter Four (Public Land Policy and the Environment):

16. Environmental quality should be recognized by law as an important objective of public land management, and public land policy should be designed to enhance and maintain a high quality environment both on and off the public lands. *Page 68.*

17. Federal standards for environmental quality should be established for public lands to the extent possible, except that, where state standards have been adopted under Federal law, state standards should be utilized. *Page 70.*

18. Congress should require classification of the public lands for environmental quality and enhancement and maintenance. *Page 73.*

19. Congress should specify the kinds of environmental factors to be considered in land use planning and decisionmaking, and require the agencies to indicate clearly how they were taken into account. *Page 77.*

20. Congress should provide for greater use of studies of environmental impacts as a precondition to certain kinds of uses. *Page 80.*

21. Existing research programs related to the public lands should be expanded for greater emphasis on environmental quality. *Page 80.*

22. Public hearings with respect to environmental considerations should be mandatory on proposed public land projects or decisions when requested by the states or by the Council on Environmental Quality. *Page 81.*

23. Congress should authorize and require the public land agencies to condition the granting of rights or privileges to the public lands or their resources on compliance with applicable environmental control measures governing operations off public lands which are closely related to the right or privilege granted. *Page 81.*

24. Federal land administering agencies should be authorized to protect the public land environment by (1) imposing protective covenants in disposals of public lands, and (2) acquiring easements on non-Federal lands adjacent to public lands. *Page 82.*

25. Those who use the public lands and resources should, in each instance, be required by statute to conduct their activities in a manner that avoids or minimizes adverse environmental impacts, and should be responsible for restoring areas to an acceptable standard where their use has an adverse impact on the environment. *Page 83.*

26. Public land areas in need of environmental rehabilitation should be inventoried and the Federal Government should undertake such rehabilitation. Funds should be appropriated as soon as practical for environmental management and rehabilitation research. *Page 86.*

27. Congress should provide for the creation and preservation of a natural area system for scientific and educational purposes. *Page 87.*

Chapter Five (Timber Resources):

28. There should be a statutory requirement that those public lands that are highly productive for timber be classified for commercial timber production as the dominant use, consistent with the Commission's concept of how multiple use should be applied in practice. *Page 92.*

29. Federal programs on timber production units should be financed by appropriations from a revolving fund made up of receipts from timber sales on these units. Financing for development and use of public forest lands, other than those classified for timber production as the dominant use, would be by appropriation of funds unrelated to receipts from the sale of timber. *Page 95.*

30. Dominant timber production units should be managed primarily on the basis of economic factors so as to maximize net returns to the Federal Treasury. Such factors should also play an important but not primary role in timber management on other public lands. *Page 96.*

31. Major timber management decisions, including allowable-cut determinations, should include specific consideration of economic factors. *Page 97.*

32. Timber sales procedures should be simplified wherever possible. *Page 98.*

33. There should be an accelerated program of timber access road construction. *Page 99.*

34. Communities and firms dependent on public land timber should be given consideration in the management and disposal of public land timber. *Page 99.*

35. Timber production should not be used as a

justification for acquisition or disposition of Federal public lands. *Page 101.*

36. Controls to assure that timber harvesting is conducted so as to minimize adverse impacts on the environment on and off the public lands must be imposed. *Page 101.*

Chapter Six (Range Resources):

37. Public land forage policies should be flexible, designed to attain maximum economic efficiency in the production and use of forage from the public land, and to support regional economic growth. *Page 106.*

38. The grazing of domestic livestock on the public lands should be consistent with the productivity of those lands. *Page 106.*

39. Existing eligibility requirements should be retained for the allocation of grazing privileges up to recent levels of forage use. Increases in forage production above these levels should be allocated under new eligibility standards. Grazing permits for increased forage production above recent levels should be allocated by public auction among qualified applicants. *Page 108.*

40. Private grazing on public land should be pursuant to a permit that is issued for a fixed statutory term and spells out in detail the conditions and obligations of both the Federal Government and the permittee, including provisions for compensation for termination prior to the end of the term. *Page 109.*

41. Funds should be invested under statutory guidelines in deteriorated public grazing lands retained in Federal ownership to protect them against further deterioration and to rehabilitate them where possible. On all other retained grazing lands, investments to improve grazing should generally be controlled by economic guidelines promulgated under statutory requirements. *Page 114.*

42. Public lands, including those in national forests and land utilization projects, should be reviewed and those chiefly valuable for the grazing of domestic livestock identified. Some such public lands should, when important public values will not be lost, be offered for sale at market value with grazing permittees given a preference to buy them. Domestic livestock grazing should be declared as the dominant use on retained lands where appropriate. *Page 115.*

43. Control should be asserted over public access to and the use of retained public grazing lands for nongrazing uses in order to avoid unreasonable interference with authorized livestock use. *Page 116.*

44. Fair-market value, taking into consideration factors in each area of the lands involved, should be established by law as a basis for grazing fees. *Page 117.*

45. Policies applicable to the use of public lands for grazing purposes generally should be uniform for all classes of public lands. *Page 118.*

Chapter Seven (Mineral Resources):

46. Congress should continue to exclude some classes of public lands from future mineral development. *Page 123.*

47. Existing Federal systems for exploration, development, and production of mineral resources on the public lands should be modified. *Page 124.*

48. Whether a prospector has done preliminary exploration work or not, he should, by giving written notice to the appropriate Federal land management agency, obtain an exclusive right to explore a claim of sufficient size to permit the use of advanced methods of exploration. As a means of assuring exploration, reasonable rentals should be charged for such claims, but actual expenditures for exploration and development work should be credited against the rentals.

Upon receipt of the notice of location, a permit should be issued to the claimholder, including measures specifically authorized by statute necessary to maintain the quality of the environment, together with the type of rehabilitation that is required.

When the claimholder is satisfied that he has discovered a commercially mineable deposit, he should obtain firm development and production rights by entering into a contract with the United States to satisfy specified work or investment requirements over a reasonable period of time.

When a claimholder begins to produce and market minerals, he should have the right to obtain a patent only to the mineral deposit, along with the right to utilize surface for production. He should have the option of acquiring title or lease to surface upon payment of market value.

Patent fees should be increased and equitable royalties should be paid to the United States on all minerals produced and marketed whether before or after patent. *Page 126.*

49. Competitive sale of exploration permits or leases should be held whenever competitive interest can reasonably be expected. *Page 132.*

50. Statutory provision should be made to permit hobby collecting of minerals on the unappropriated public domain and the Secretary of the Interior should be required to promulgate regulations in accordance with statutory guidelines applicable to these activities. *Page 134.*

51. Legislation should be enacted which would authorize legal actions by the Government to acquire outstanding claims or interests in public land oil shale subject to judicial determination of value. *Page 134.*

52. Some oil shale public lands should be made available now for experimental commercial development by private industry with the cooperation of the Federal Government in some aspects of the development. *Page 135.*

53. Restrictions on public land mineral activity that are no longer relevant to existing conditions should be eliminated so as to encourage mineral exploration and development and long standing claims should be disposed of expeditiously. *Page 135.*

54. The Department of the Interior should continue to have sole responsibility for administering mineral activities on all public lands, subject to consultation with the department having management functions for other uses. *Page 136.*

55. In future disposals of public lands for nonmineral purposes, all mineral interests known to be of value should be reserved with exploration and development discretionary in the Federal Government and a uniform policy adopted relative to all reserved mineral interests. *Page 136.*

Chapter Eight (Water Resources):

56. The implied reservation doctrine of water rights for federally reserved lands should be clarified and limited by Congress in at least four ways: (a) amounts of water claimed, both surface and underground, should be formally established; (b) procedures for contesting each claim should be provided; (c) water requirements for future reservations should be expressly reserved; and (d) compensation should be awarded where interference results with claims valid under state law before the decision in *Arizona v. California. Page 146.*

57. Congress should require the public land management agencies to submit a comprehensive report describing: (1) the objectives of current watershed protection and management programs; (2) the actual practices carried on under these programs; and (3) the demonstrated effect of such practices on the program objectives. Based on such information, Congress should establish specific goals for watershed protection and management, provide for preference among them, and commit adequate funds to achieve them. *Page 150.*

58. "Watershed protection" should in specified, limited cases be: (1) a reason for retaining lands in Federal ownership; and (2) justification for land acquisition. *Page 151.*

59. Congress should require federally authorized water development projects on public lands to be planned and managed to give due regard to other values of the public lands. *Page 154.*

Chapter Nine (Fish and Wildlife Resources):

60. Federal officials should be given clear statutory authority for final land use decisions that affect fish and wildlife habitat or populations on the public lands. But they should not take action inconsistent with state harvesting regulations, except upon a finding of overriding national need after adequate notice to, and full consultation with, the states. *Page 158.*

61. Formal statewide cooperative agreements should be used to coordinate public land fish and wildlife programs with the states. *Page 159.*

62. The objectives to be served in the management of fish and resident wildlife resources, and providing for their use on all classes of Federal public lands, should be clearly defined by statute. *Page 160.*

63. Statutory guidelines are required for minimizing conflicts between fish and wildlife and other public land uses and values. *Page 164.*

64. Public lands should be reviewed and key fish and wildlife habitat zones identified and formally designated for such dominant use. *Page 168.*

65. A Federal land use fee should be charged for hunting and fishing on all public lands open for such purposes. *Page 169.*

66. The states and the Federal Government should share on an equitable basis in financing fish and wildlife programs on public lands. *Page 173.*

67. State policies which unduly discriminate against nonresident hunters and fishermen in the use of public lands through license fee differentials and various forms of nonfee regulations should be discouraged. *Page 174.*

Chapter Ten (Intensive Agriculture):

68. The homestead laws and the Desert Land Act should be repealed and replaced with statutory authority for the sale of public lands for intensive agriculture when that is the highest and best use of the land. *Page 177.*

69. Public lands should be sold for agricultural purposes at market value in response to normal market demand. Unreserved public domain lands and lands in land utilization projects should be considered for disposal for intensive agriculture purposes. *Page 179.*

70. The states should be given a greater role in the determination of which public lands should be sold for intensive agricultural purposes. The state governments should be given the right to certify or veto the potential agricultural use of public lands but only according to the availability of state water rights. Consideration should also be given to consistency of use with state or local economic development plans and zoning regulations. *Page 180.*

71. The allocation of public lands to agricultural use should not be burdened by artificial and obsolete restraints such as acreage limitations on individual holdings, farm residency requirements, and the exclusions of corporations as eligible applicants. *Page 182.*

Chapter Eleven (The Outer Continental Shelf):

72. Complete authority over all activities on the Outer Continental Shelf should continue to be vested by statute in the Federal Government. Moreover, all Federal functions pertaining to that authority, including navigational safety, safety on or about structures and islands used for mineral activities, pollution control and supervision, mapping and charting, oceanographic and other scientific research, preservation and protection of the living resources of the sea, and occupancy uses of the Outer Continental Shelf, should be consolidated within the Government to the greatest possible degree. *Page 188.*

73. Protection of the environment from adverse effects of activities on the Federal Outer Continental Shelf is a matter of national concern and is a responsibility of the Federal Government. The Commission's recommendations concerning improved protection and enhancement of the environment generally require separate recognition in connection with activities on the Shelf, and agencies having resource management responsibility on the Shelf should be required by statute to review practices periodically and consider recommendations from all interested sources, including the Council on Environmental Quality.

In addition, there must be a continuing statutory liability upon lessees for the cleanup of oil spills occasioned from drilling or production activities on Federal Outer Continental Shelf leases. *Page 190.*

74. Proposals to open areas of the Outer Continental Shelf to leasing, including both the call for nomination of tracts and the invitation to bid, as well as operational orders and waivers of order requirements should be published in at least one newspaper of general circulation in each state adjacent to the area proposed for leasing or for which orders are promulgated.

Where a state, on the recommendation of local interests or otherwise, believes that Outer Continental Shelf leasing may create environmental hazards, or that necessary precautionary measures may not be provided, or that natural preservation of an area is in the best interest of the public, then, at the state's request, a public hearing should be held and specific findings issued concerning the objections raised. *Page 191.*

75. The Outer Continental Shelf Lands Act should be amended to give the Secretary of the Interior authority for utilizing flexible methods of competitive sale. Flexible methods of pricing should be encouraged, rather than the present exclusive reliance on bonus bidding, plus a fixed royalty. In addition, the timing and size of lease sales, both of which are presently irregular, should be regularized. Furthermore, while discretion to reject bids should remain with the Secretary, this authority should be qualified to require that he state his reasons for rejection. *Page 192.*

76. To the extent that adjacent states can prove net burdens resulting from onshore or offshore operations, in connection with Federal mineral leases on the Outer Continental Shelf, compensatory impact payments should be authorized and negotiated. *Page 193.*

77. The Federal Government should undertake an expanded offshore program of collection and dissemination of basic geological and geophysical data.

As part of that program, information developed under exploration permits should be fully disclosed to the Government in advance of Outer Continental Shelf lease sales. However, industry evaluations of raw data should be treated as proprietary and excluded from mandatory disclosure. *Page 193.*

Chapter Twelve (Outdoor Recreation):

78. An immediate effort should be undertaken to identify and protect those unique areas of national significance that exist on the public lands. *Page 198.*

79. Recreation policies and programs on those public lands of less than national significance should be designed to meet needs identified by statewide recreation plans. *Page 199.*

80. The Bureau of Outdoor Recreation should be directed to review, and empowered to disapprove, recreation proposals for public lands administered under general multiple-use policy if they are not in general conformity with statewide recreation plans. *Page 202.*

81. A general recreation land use fee, collected through sale of annual permits, should be required of all public land recreation users and, where feasible, additional fees should be charged for use of facilities constructed at Federal expense. *Page 203.*

82. Statutory guidelines should be established for resolving and minimizing conflicts among recreation uses and between outdoor recreation and other uses of public lands. *Page 205.*

83. The Federal role in assuming responsibility for public accommodations in areas of national significance should be expanded. The Federal Government should, in some instances, finance and construct adequate facilities with operation and maintenance left to concessioners. The security of investment afforded National Park Service concessioners by the Concessioner Act of 1965 should be extended to concessioners operating under comparable conditions elsewhere on the Federal public lands. *Page 208.*

84. Private enterprise should be encouraged to play a greater role in the development and management of intensive recreation use areas on those public

lands not designated by statute for concessioner development. *Page 211.*

85. Congress should provide guidelines for developing and managing the public land resources for outdoor recreation. The system of recreation land classification recommended by the Outdoor Recreation Resources Review Commission should be refined and adopted as a statutory guide to be applied to all public lands. *Page 213.*

86. Congress should authorize a program for acquiring and developing reasonable rights-of-way across private lands to provide a more extensive system of access for outdoor recreation and other uses of the public lands. *Page 214.*

87. The direct Federal acquisition of land for recreation purposes should be restricted primarily to support the Federal role in acquiring and preserving areas of unique national significance; acquisitions of additions to Federal multiple use lands for recreation purposes should be limited to inholdings only. *Page 215.*

88. The Land and Water Conservation Fund Act should be amended to improve financing of public land outdoor recreation programs. During the interim period until the recreation land use fee we recommend is adopted, the Golden Eagle Program should be continued. After essential acquisitions have been completed, the Land and Water Conservation Fund should be available for development of Federal public land areas. *Page 215.*

Chapter Thirteen (Occupancy Uses):

89. Congress should consolidate and clarify in a single statute the policies relating to the occupancy purposes for which public lands may be made available. *Page 219.*

90. Where practicable, planning and advanced classification of public lands for specific occupancy uses should be required. *Page 219.*

91. Public land should be allocated to occupancy uses only where equally suitable private land is not abundantly available. *Page 220.*

92. All individuals and entities generally empowered under state law to exercise an authorized occupancy privilege should be eligible applicants for occupancy uses, although a showing of financial and administrative capability should be required where large investments are involved.

Lands generally should be allocated competitively where there is more than one qualified private applicant, but preference should be given to state and local governments and nonprofit organizations to obtain land for public purposes and to REA cooperatives where incidental to regular REA operations. *Page 220.*

93. In general, disposal should be the preferred policy in meeting the need for occupancy uses that require substantial investment, materially alter the land, and are comparatively permanent in character, except where such uses are nonexclusive. *Page 220.*

94. Where occupancy uses are authorized on retained lands by permit, lease, or otherwise, (a) the term and size of permits should be adequate to accommodate project and the required investment; (b) compensation should be paid when the use is terminated by Federal action prior to expiration of the prescribed term; and (c) a preference right to purchase should be accorded to such users dependent on the lands if they are later offered for disposal. *Page 221.*

95. Public lands should not hereafter be made available under lease or permit for private residential and vacation purposes, and such existing uses should be phased out. *Page 223.*

96. Land management agencies should have the authority to require a reciprocal right-of-way on equitable terms as a condition of a grant of a right-of-way across public land. *Page 224.*

97. A new statutory framework should be enacted to make public lands available for the expansion of existing communities and for the development of new cities and towns. *Page 226.*

98. Whenever the Federal Government utilizes its position as landowner to accomplish, indirectly, public policy objectives unrelated to protection or development of the public lands, the purpose to be achieved and the authority therefor should be provided expressly by statute. *Page 229.*

99. While control and administration of occupancy uses should remain with the agencies managing the lands, assistance should be obtained from agencies having technical competence in connection with specific programs. *Page 229.*

100. The Secretary of the Interior should be authorized to approve other uses of railroad rights-of-way with the consent of the affected railroad, and persons holding defective titles from railroads to right-of-way lands should be confirmed in their uses by the Federal Government and the affected railroads. *Page 230.*

Chapter Fourteen (Tax Immunity):

101. If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.

Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands. *Page 236.*

102. Payments in lieu of taxes should be made to state governments, but such payments should not

attempt to provide full equivalency with payments that would be received if the property was in private ownership. A public benefits discount of at least 10 percent but not more than 40 percent should be applied to payments made by the Government in order to give recognition to the intangible benefits that some public lands provide, while, at the same time, recognizing the continuing burdens imposed on state and local governments through the increased use of public lands. The payments to states should be conditioned on distribution to those local units of government where the Federal lands are located, subject to criteria and formulae established by the states. Extraordinary benefits and burdens should be treated separately and payments made accordingly. *Page 237.*

103. In a payments-in-lieu-of-taxes system, a transition period should be provided for states and counties to adjust in changing from the existing system. *Page 241.*

Chapter Fifteen (Land Grants to States):

104. No additional grants should be made to any of the 50 states. *Page 243.*

105. Within a relatively brief period, perhaps from 3 to 5 years, the Secretary of the Interior, in consultation with the involved states, should be required to classify land as suitable for state indemnity selection, in reasonably compact units, and such classifications should aggregate at least 3 or 4 times the acreage due to each state. In the event the affected states do not agree, within 2 years thereafter, to satisfy their grants from the lands so classified, the Secretary should be required to report the differences to the Congress. If no resolution, legislative or otherwise, is reached at the end of 3 years after such report, making a total of 10 years of classification, selection, and negotiation, all such grants should be terminated. *Page 245.*

106. Limitations originally placed by the Federal Government on the use of grant lands, or funds derived from them, should be eliminated. *Page 247.*

107. The satisfaction of Federal land grants to Alaska should be expedited with the aim of completing selection by 1984 in accordance with the Statehood Act, and selections of land under the Alaska Statehood Act should have priority over any land classification program of the Bureau of Land Management. *Page 249.*

Chapter Sixteen (Administrative Procedures):

108. Congress should require public land management agencies to utilize rulemaking to the fullest extent possible in interpreting statutes and exercising delegated discretion, and should provide legislative restrictions to insure compliance with this goal. *Page 251.*

109. Congress should direct the public land agencies to restructure their adjudication organization and procedures in order to assure: (1) procedural due process; (2) greater third party participation; (3) objective administrative review of initial decisions; and (4) more expeditious decisionmaking. *Page 253.*

110. Judicial review of public land adjudications should be expressly provided for by Congress. *Page 256.*

Chapter Seventeen (Trespass and Disputed Title):

111. Statutes and administrative practices defining unauthorized use of public lands should be clarified, and remedies available to the Federal Government should be uniform among land management agencies. Where necessary, statutory authority for policing by Federal agencies should be provided. *Page 259.*

112. An intensified survey program to locate and mark boundaries of all public lands based upon a system of priorities, over a period of years, should be undertaken as the public interest requires. *Page 260.*

113. The doctrine of adverse possession should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The defenses of equitable estoppel and laches should be available in a suit brought by the Government for the purpose of trying title to real property or for ejectment.

In cases where questions of adverse possession, equitable estoppel, and laches do not apply, persons who claim an interest in public land based upon good faith, undisturbed, unauthorized occupancy for a substantial period of time, should be afforded an opportunity to purchase or lease such lands. *Page 260.*

Chapter Eighteen (Disposals, Acquisitions, and Exchanges):

114. Statutory eligibility qualifications of applicants for public lands subject to disposal should generally avoid artificial restraints and promote maximum competition for such lands. Preferences for certain classes of applicants should be used sparingly. *Page 265.*

115. Disposals in excess of a specified dollar or acreage amount should require congressional authorization. *Page 265.*

116. Where land is disposed of at less than fair-market value, or where it is desired to assure that lands be used for the purpose disposed of for a limited period to avoid undue speculation, transfers should provide for a possibility of reverter, which

should expire after a reasonable period of time. *Page 265.*

117. Public lands generally should not be disposed of in an area unless adequate state or local zoning is in effect. In the absence of such zoning, and where disposal is otherwise desirable, covenants in Federal deeds should be used to protect public values. *Page 266.*

118. Protective covenants should be included in Federal deeds to preserve important environmental values on public lands in certain situations, even where state or local zoning is in effect. *Page 266.*

119. The general acquisition authority of the public land management agencies should be consistent with agency missions. *Page 267.*

120. The general land acquisition authority of the public land management agencies should be revised to provide uniformity and comprehensiveness with respect to (1) the interests in lands which may be acquired, and (2) the techniques available to acquire them. *Page 267.*

121. The public land management agencies should be authorized to employ a broad array of acquisition techniques on an experimental basis in order to determine which appear best adapted to meeting the problem of price escalation of lands required for Federal programs. *Page 268.*

122. Congress should specify the general program needs for which lands may be acquired by each public land agency. *Page 269.*

123. Justification standards for and oversight of public land acquisitions should be strengthened, and present statutory requirements for state consent to certain land acquisitions should be replaced with directives to engage in meaningful coordination of Federal acquisition programs with state and local governments. *Page 269.*

124. General land exchange authority should be used primarily to block up existing Federal holdings or to accomplish minor land tenure adjustments in the public interest, but not for acquisition of major new Federal units. *Page 270.*

125. Exchange authority of the public land management agencies should be made uniform to permit (1) the exchange of all classes of real property interests, and (2) cash equalization within percentage limits of the value of the transaction. *Page 271.*

126. Generally, within each department, all federally owned lands otherwise available for disposal should be subject to exchange, regardless of agency jurisdiction and geographic limitation. *Page 271.*

127. Public land administrators should be authorized by law to dispense with the requirement of a formal appraisal: (1) in any sale or lease where there is a formal finding that competition exists, the sale or lease will be held under competitive bidding procedures, and the property does not have a value in excess of some specified amount set forth in the statute; and (2) whenever property can be acquired for less than some specified price set forth in the statute, provided a formal finding is made that the property to be acquired has a value at least equal to the amount the Government would be paying in either a direct purchase or exchange. *Page 272.*

128. Administration of all land acquisition programs for Department of the Interior agencies, including performance of the appraisal function, should be consolidated within the Department. Procedures, however, should be standardized for all public land management agencies. *Page 273.*

Chapter Nineteen (Federal Legislative Jurisdiction):

129. Exclusive Federal legislative jurisdiction should be obtained, or retained, only in those uncommon instances where it is absolutely necessary to the Federal Government, and in such instances the United States should provide a statutory or regulatory code to govern the areas. *Page 278.*

130. Federal departments and agencies should have the authority to retrocede exclusive Federal legislative jurisdiction to the states, with the consent of the states. *Page 279.*

Chapter Twenty (Organization, Administration, and Budgeting Policy):

131. The Forest Service should be merged with the Department of the Interior into a new department of natural resources. *Page 282.*

132. Greater emphasis should be placed on regional administration of public land programs. *Page 284.*

133. The recommended consolidation of public land programs should be accompanied by a consolidation of congressional committee jurisdiction over public land programs into a single committee in each House of Congress. *Page 284.*

134. The President's budget should include a consolidated budget for public land programs that shows the relationship between costs and benefits of each program. *Page 285.*

135. Periodic regional public land programs should be authorized by statute as a basis for annual budgets and for appropriation of funds. *Page 286.*

136. There should be a uniform, statutory basis for pricing goods and services furnished from the public lands. *Page 287.*

137. Statutory authority should be provided for public land citizen advisory boards and guidelines for their operation should be established by statute. *Page 288.*

CHAPTER ONE

Where and What Are Public Lands?

THE Commission's task has been a challenging one. The Congress of the United States has charged it with reviewing, in the light of contemporary conditions, laws, policies, practices, and procedures affecting the public lands, which constitute nearly one-third of the area of the Nation.

The Act creating the Commission declared that the Nation's public lands should be retained and managed, or disposed of, all in a manner to provide the maximum benefit for the general public. This goal has been the Commission's objective. In the process of developing its conclusions and recommendations, its members have constantly applied John Ruskin's admonition: "God has lent us the earth for our life; it is a great entail. It belongs as much to those who are to come after us . . . as to us; and we have no right, by anything we do or neglect, to involve them in any unnecessary penalties, or to deprive them of benefits which it was in our power to bequeath." [1]

In the 100 years after the United States became a Nation, it was presented with an unparalleled opportunity by the acquisition of lands. Seven of the original states ceded their western lands to the Federal Government. These lands generally included those between the original states and the Mississippi River. Following this, the acquisition of the lands between the Mississippi and the Pacific Ocean and finally the acquisition of Alaska in 1867 provided the United States with a vast area of largely unsettled lands that in the main had not been committed to private ownership or use.

The acquisition of these lands and the desire to dispose of them to encourage settlement of the West took place just at the time that the railroad was making it possible to open these lands to settlement and use. And the lands generally were rich in resources and productive for farming so that it was possible to settle the West. The policy of making these lands available to those who would develop them must be judged as highly successful. In good part because of this policy, the United States now has the highest standard of living of any nation on the earth.

But not all of the Federal lands were suitable for development and not all of them have been made available for development. Some of the lands were too dry for farming and some of the high mountain lands were also unsuited to farming. And much of Alaska was unsuitable for farming. Other lands, the national forests and national parks, were reserved from disposition under the settlement laws in order to meet other objectives of the Federal Government.

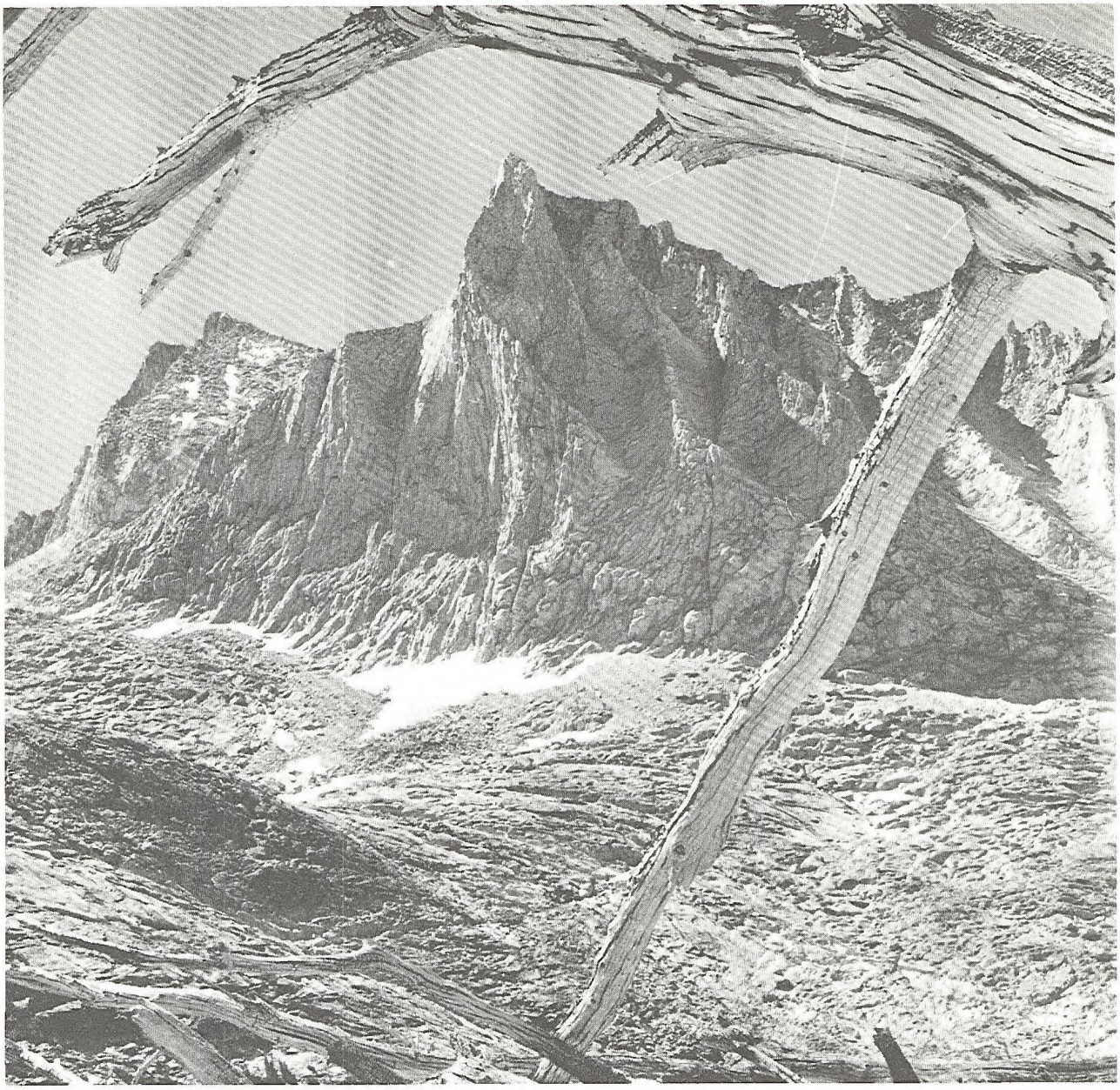
The Lands and Their Administration

The remaining public domain in Federal ownership together with additional areas of acquired national forest and wildlife refuge lands total nearly 725 million acres.[2] These lands, which have been assigned by Congress to this Commission for review, cover an area equal to the size of India. In addition, the Commission has considered the laws, policies, and practices governing some 20 million acres of land acquired for the National Park System, land utilization project lands, and other areas which, for various reasons, were deemed similar to those within the Commission's mandate.

Nearly 700 million acres of the original public domain, lands that were never transferred from Federal ownership, remain as part of our public lands.

[1] *The Seven Lamps of Architecture,* 8 Works of John Ruskin 233 (E. T. Cook and A. Wedderburn, ed. 1903).

[2] The distribution of public lands throughout the United States is shown for each major category of lands on the map folded in this report.



Over 179 million acres of the public domain have been reserved as national parks and national forests. Some, approximately 53.5 million acres, have been set aside for specific uses by the Department of Defense, Atomic Energy Commission, and other Federal agencies. In all cases the lands are still classed as part of the public domain for some purposes.

The rest of the Federal lands have been acquired from non-Federal owners. Some 26 million acres have been acquired for inclusion in national forests and national wildlife refuges and another 29 million acres have been acquired for other purposes that are connected with or similar to those on which our review concentrated.

The lands with which our review is concerned are for the most part managed by four agencies of the Federal Government: the United States Forest Service of the Department of Agriculture, and the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service of the Department of the Interior. Smaller but significant acreages are administered by the military departments, the Atomic Energy Commission, and the Bureau of Reclamation.[3]

The Bureau of Land Management is responsible

[3] The graph, Administration of Federal Lands by Agency, 1968, page 22, shows the proportion of public lands administered by each major agency. Areas administered by each agency are shown in Acreage of Lands Administered by Agency and State, Appendix F.

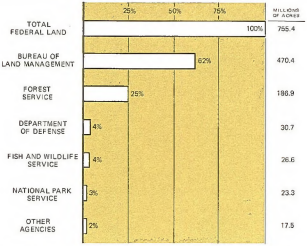
Diversity of Geology on the Public Lands: The "young" Sierras and the "old" Blue Ridge Mountains.

for administration of the more than 465 million acres of public domain lands that have not been set aside for particular uses; together with other lands, it administers over 60 percent of all Federal lands. Almost two-thirds of the lands it manages are in Alaska. The remainder are almost entirely in the 11 western states. These are primarily the lands that were not considered suitable for farming or for inclusion in national parks and forests.

About one-fourth of the Federal lands are administered by the Forest Service. Most of this is 160 million acres of public domain under its control in the West. It also administers over 22 million acres of acquired national forest lands, primarily in the eastern United States, and approximately 3.5 million acres of other acquired lands.

Much smaller acreages are managed by the National Park Service (23.3 million acres) and Bureau of Sport Fisheries and Wildlife (26.6 million acres). The responsibilities of these agencies, however, are

ADMINISTRATION OF FEDERAL LANDS BY AGENCY, 1968



SOURCE: PLLRC STUDY, INVENTORY INFORMATION OF PUBLIC LANDS, TABLE A3b, 1968.

The bulk of the Federal lands are administered by the Bureau of Land Management and the Forest Service.

substantial because of the variety of lands included in the national park and national wildlife refuge systems, and their location throughout the country.

Location of the Public Lands

About one-half of the public lands are in Alaska. Because of its remoteness and northern location, development has not made progress in Alaska to the same extent as in other states. As a result, the Federal Government still owns over 95 percent of all the lands in the state.

The other half of the public lands are located in the 48 contiguous states, but are not evenly distributed throughout the states. Over 90 percent of the Federal lands outside of Alaska are in the 11 western states. The huge expanse of the public lands of the Far West is difficult for many to comprehend. Yet, to understand adequately the Commission's conclusions and recommendations, this vastness must be studied, understood, and kept in mind.

More than 86 percent of the State of Nevada is owned by the Federal Government, and the public land area in that state is twice the size of the entire State of New York. Similarly, public land in California amounts to eight times the total area of the State of Massachusetts. Utah's public lands are about equal to the total area of the State of Florida, and Idaho's about equal to the size of Arkansas. The entire area of Pennsylvania is smaller than the Federal public land holdings in either Oregon or Wyoming. The public lands in Montana and New Mexico are each about equal to the total area of Virginia. Federal lands in Colorado are equal to the total area of Indiana; and the public land area in the State of Washington is twice as great as the total area of New Hampshire.

Despite the heavy concentration of public lands in the western states, Federal land ownership nevertheless is vitally important to other states as well. Minnesota, for example, has Federal public lands which exceed the area of Connecticut. In addition, there are 10 other nonwestern states in each of which the public landholdings of the Federal Government approximate or exceed the land area of the State of Delaware.[4] There are also significant but comparatively lesser acreages in New Hampshire, Vermont, and several Appalachian states, which are substantial in relation to the total of the area of each state involved.

The public lands must also be viewed in the context of their location relative to the population of the Nation. Of the 11 contiguous western states only two, California and Washington, have population densities equal to or exceeding the national average. The other nine western states have population densities substantially less than that of Maine, the most lightly populated state east of the Mississippi. In fact, two of them have a density of about one-tenth that of Maine and four more have a density less than one-third that of Maine.

Alaska, of course, is not comparable to any of the other states, and it is difficult to make any meaningful comparison with Alaska's sparse population. But it can be noted that the population density of Alaska is now about one-tenth that of the United States at the time of the first census in 1790.

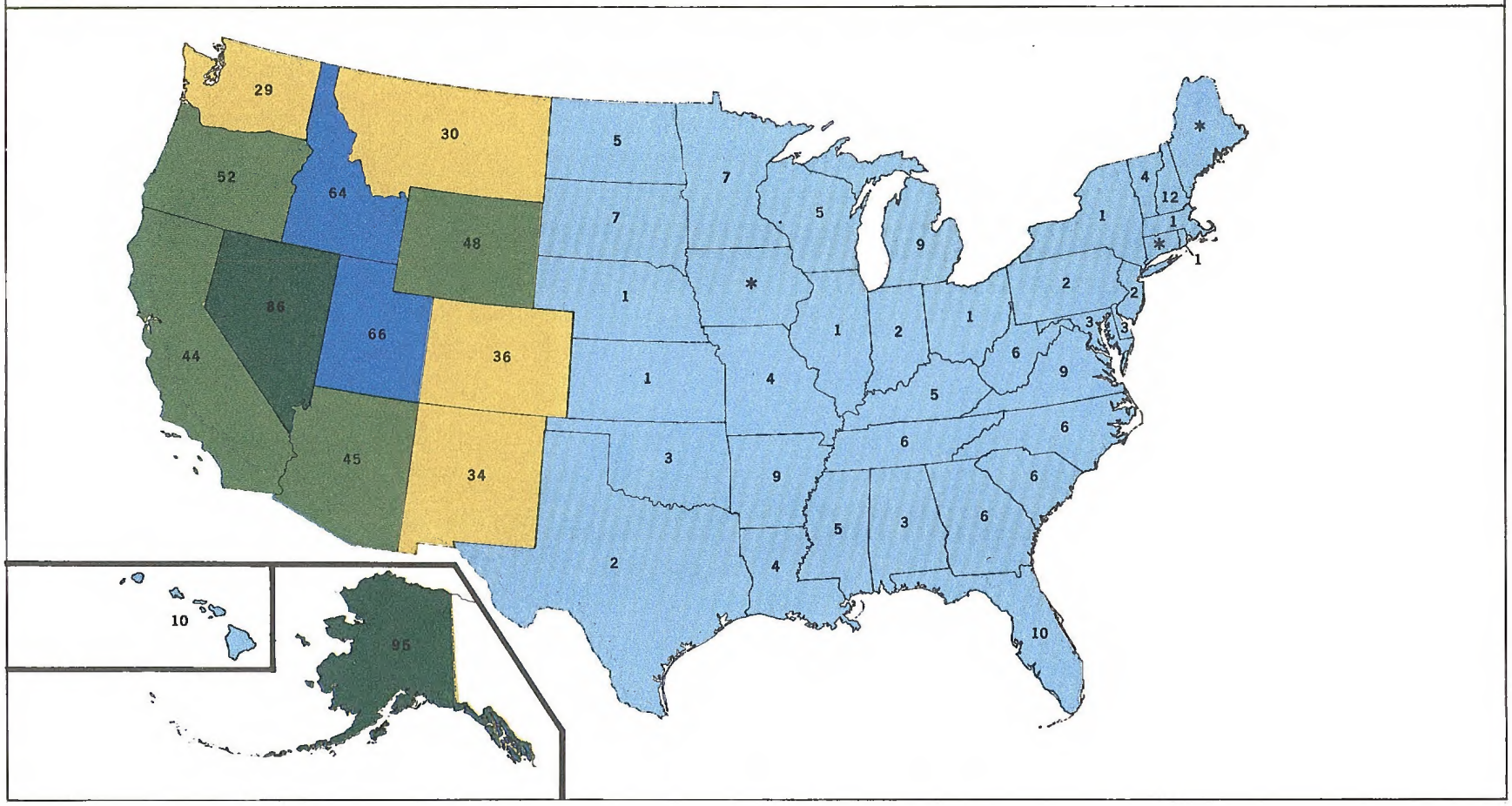
In part because of the uneven distribution of public lands, but also because of the obvious importance of these lands to all regions—including the South, the Northeast, and the Midwest—the Commission has necessarily given substantial weight to regional as well as national considerations. We have found that Federal land ownership is important to all areas because of the diversity and regional concentration of the lands.

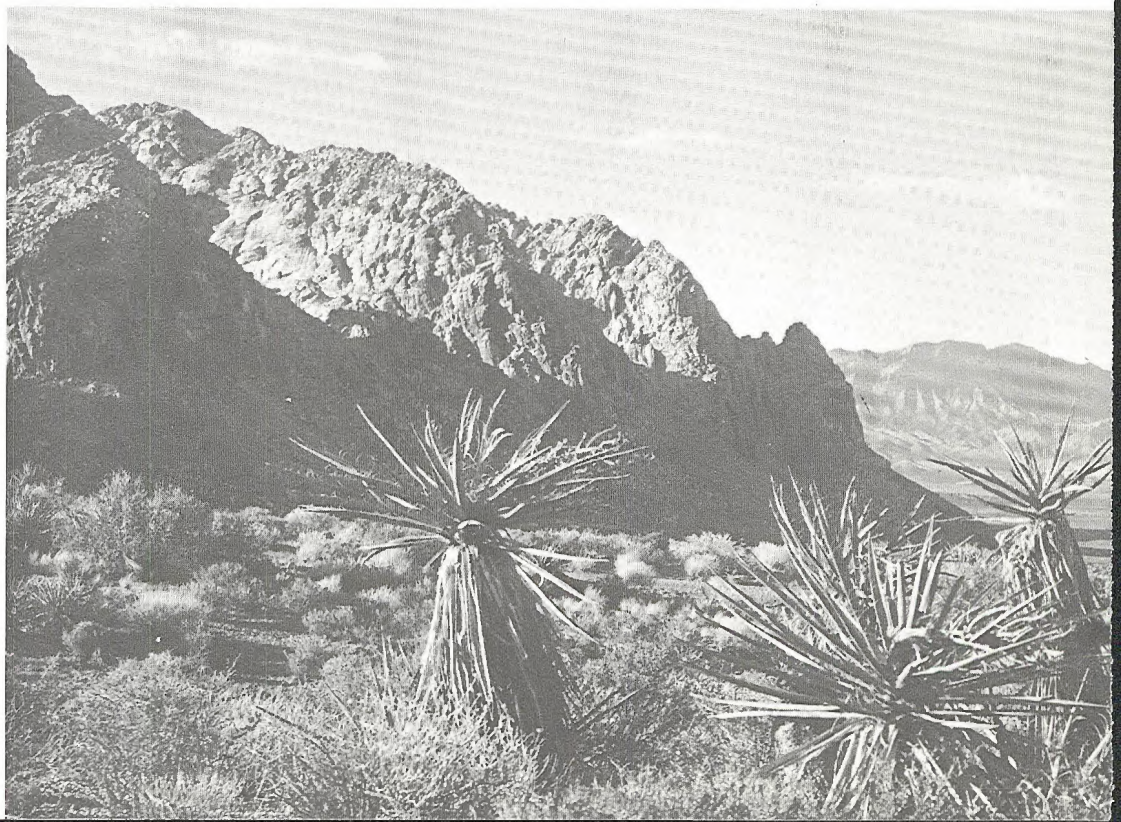
Diversity of the Public Lands

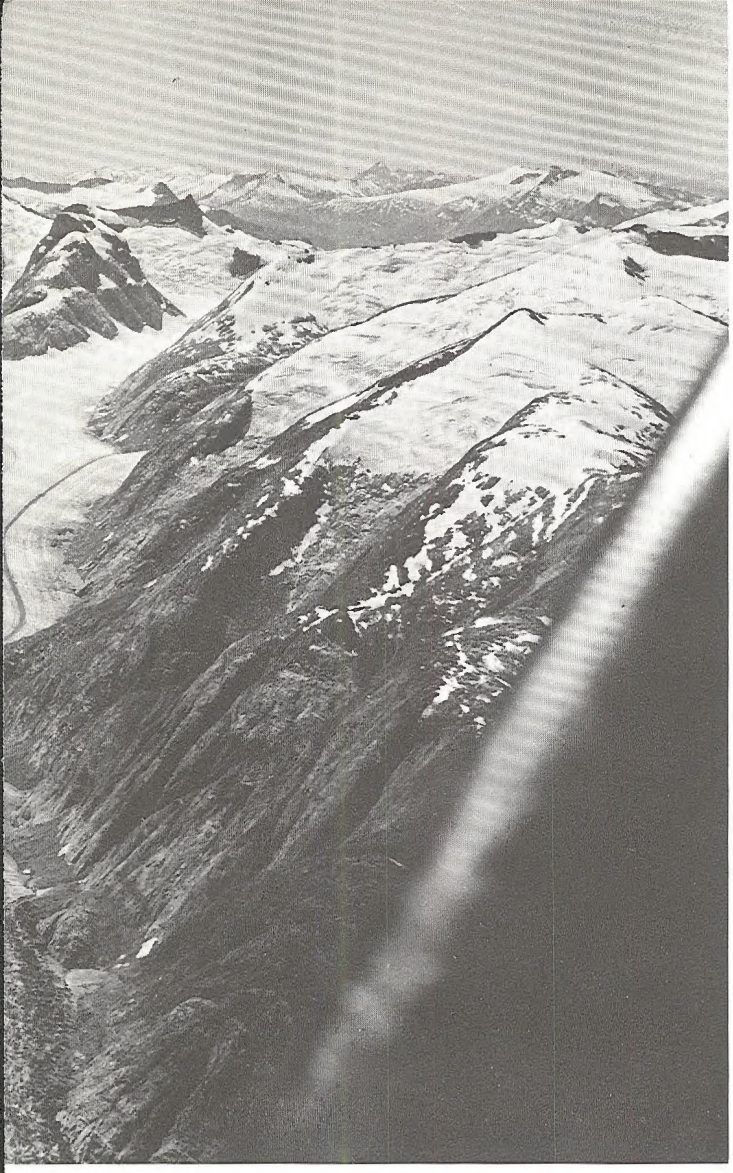
One of the most important characteristics of the public lands is their great diversity. Because of their great range—they are found from the northern tip of Alaska to the southern end of Florida—all kinds of climate conditions are found on them. Arctic cold, rain forest torrents, desert heat, mountain snows,

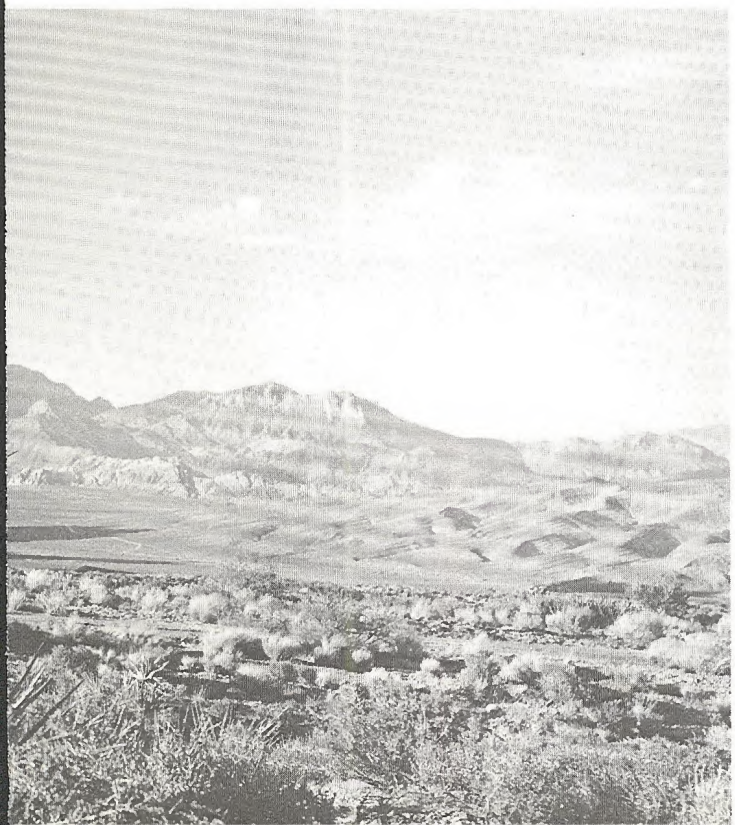
[4] They are Arkansas, Florida, Georgia, Michigan, Mississippi, Missouri, North Carolina, South Dakota, Virginia, and Wisconsin.

FEDERAL LAND IS DISTRIBUTED UNEVENLY THROUGHOUT THE UNITED STATES
PERCENT OF EACH STATE AREA FEDERALLY-OWNED, 1968

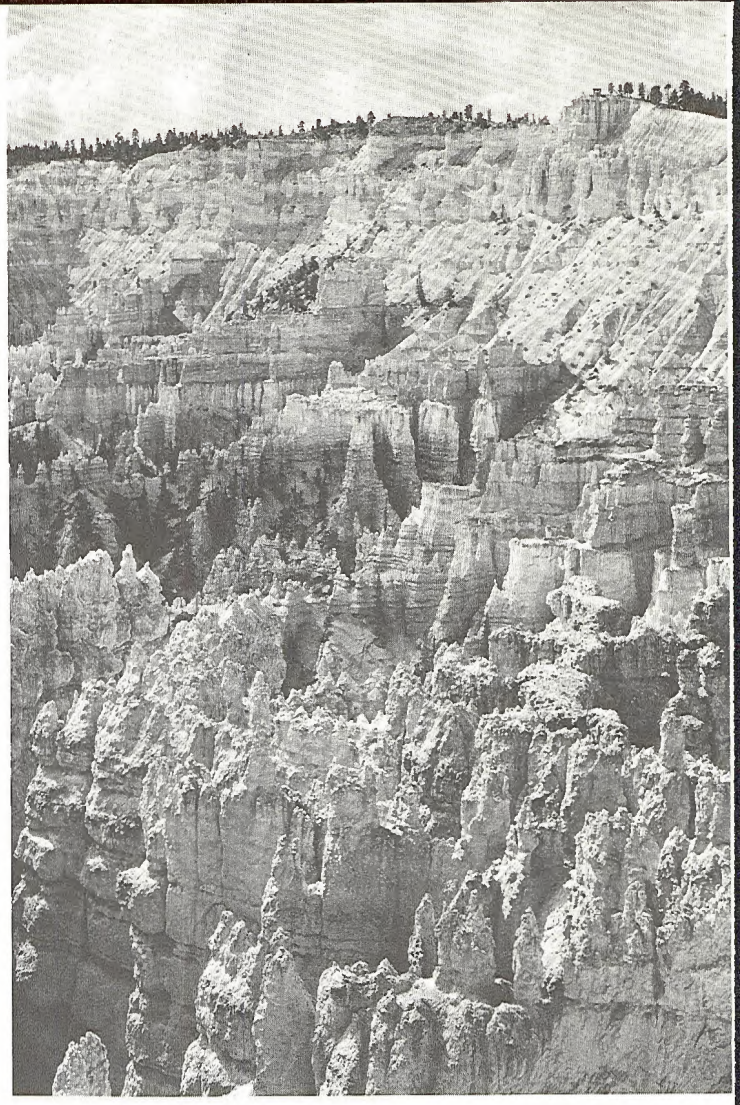




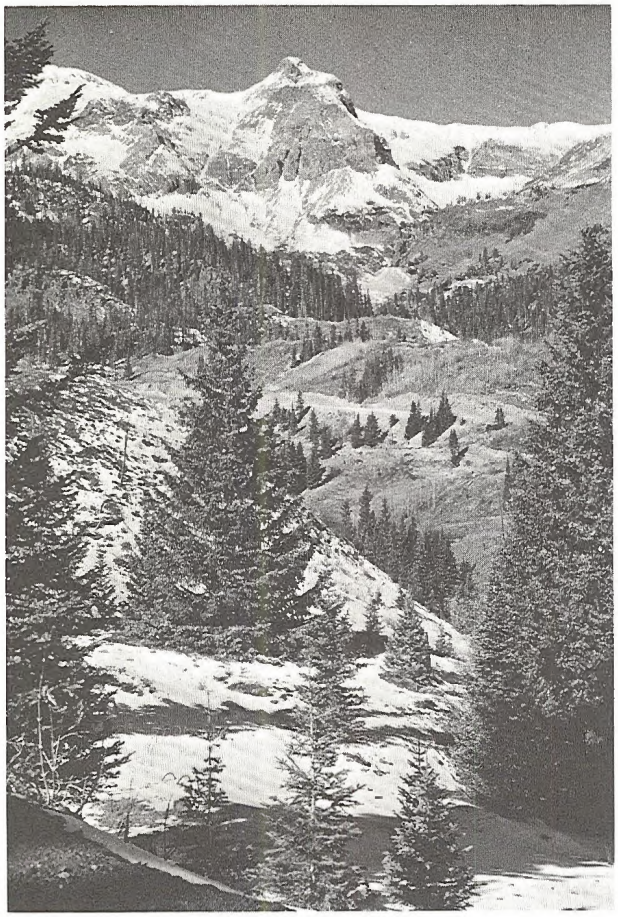


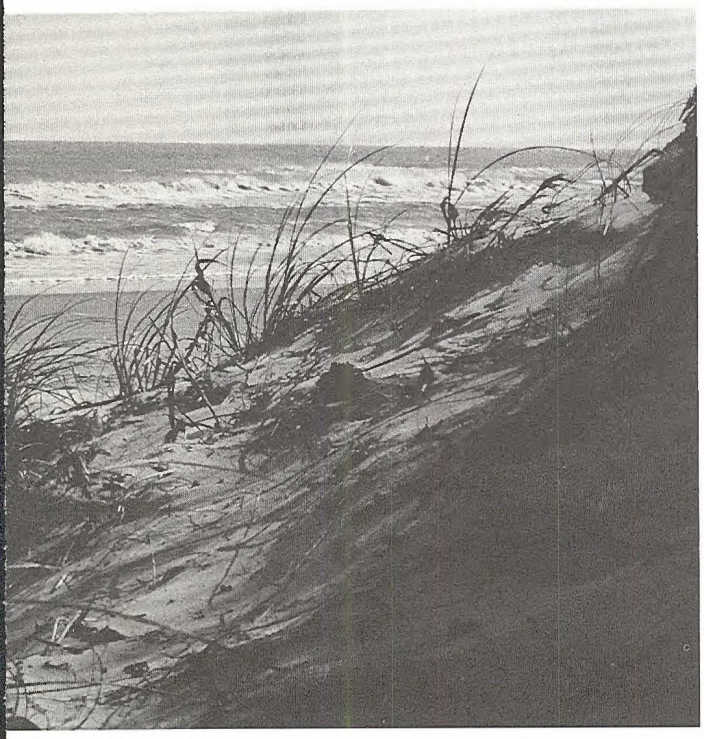


Diversity of Climate on the Public Lands: Glacial rivers of Alaska (top left); dry desert reaches of the Southwest (left); humid lowlands of the Deep South (above).



Diversity of Terrain on the Public Lands: Northern lake country (above); time-eroded spires in the Southwest (top center); the Rockies (top right); and a national seashore (right).





and semitropical littoral conditions are all characteristic of public lands in one area or another.

Great differences in terrain are also typical. The tallest mountain in North America, Mount McKinley in Alaska, is on public lands, as is the tallest mountain in the 48 contiguous states, Mount Whitney in California. But the lowest point in the United States, Death Valley, is also on public lands, as are most of the highest peaks in the White Mountains of New Hampshire and the Appalachians of the southeastern states.

Not all of these lands are mountains and valleys, however. Vast areas of tundra and river deltas in Alaska are flat, marked only with an incredible number of small lakes. Other vast areas in the Great Basin area of Nevada and Oregon are not marked with lakes, but with desert shrubs. Still other areas of rolling timber-covered mountains extend for mile after mile, both in the Pacific Northwest and the Inland Empire of Idaho, eastern Washington, and western Montana, and in the Allegheny, Green, and Ouachita Mountains of Pennsylvania, Vermont, and Arkansas. And still other vast areas are rangelands used for grazing domestic livestock.

However, not all of these public lands can be characterized as vast wild or semideveloped expanses. In many instances, Federal ownership is scattered in relatively small tracts among largely privately owned lands. The condition of the land may still be undeveloped, but our consideration of how the land should be used is necessarily influenced by the scattered nature of the Federal ownership. In some cases, public lands are found almost in the midst of urban areas and here again we must view the use of the lands in relation to the surrounding lands.

The great diversity of these lands is a resource in itself. As needs of the Nation have changed, the public lands have been able to play a changing role in meeting these needs. Whether the demand is for minerals, crop production, timber, or recreation, and whether it is national or regional, the public lands are able to play a role in meeting them.

Historical Development

Many of the present national public land attitudes and policies can be traced to historical backgrounds. While today one thinks of Alaska and the 11 western states as "public land states," 19 others in the Middle West and the South were carved from land which was once public domain. The Federal Government, in the last 175 years, has granted or sold over one billion acres of public land, land which now constitutes a major portion of the productive base of the United States.

Today we are a Nation of more than 200 million people and almost 2.3 billion acres of land. Some-

what over 1.5 billion acres are in private or state ownership. If one excludes Alaska, this is nearly four-fifths of the total area of the Nation.

It is obvious that past and present Federal land laws and policies concerning the disposal or retention of public land have shaped the mosaic of land uses over most of the United States. It is equally obvious that future public land laws and policies relating to the retention or disposal of the remaining public land will greatly influence American land use and the quality of life in the years ahead.

During most of the 19th century, our public land policy was basically one of disposal into non-Federal ownership to encourage settlement and development of the country. Those lands most favorably situated for mineral development, agriculture, and townsites were settled first. And land grants to states and to railroads resulted in areas of land being transferred out of Federal ownership. Many of these grants, which were made to provide the states with a basis for development and to encourage the westward spread of railroads, were made in a manner that much unfavorably, as well as favorably, situated land was placed in non-Federal ownership.

On the whole, however, the best and most productive land was settled first. Therefore, as a general rule, the land in non-Federal ownership is the most valuable, and the residual Federal holdings tend to be those with the least economic potential. There are, of course, significant exceptions. Beginning just prior to 1900, the emphasis in public land policy began to shift toward the retention of some lands in Federal ownership. Millions of acres of land were set aside to be held as national forests, national parks, or other conservation and management units.

Many of these lands were or became highly valuable. The timberlands that were placed in the national forests of the Pacific Northwest, largely during the early conservation period from 1891 to 1920, were recognized even then as having great commercial value. And many of the national park areas were potentially valuable not only for their splendid scenery, but for their resource values as well. In fact, reservation of the parks was often necessary to protect them from resource development.

The policy of reservation of lands for parks and forests did not halt large scale disposals after 1900. Homesteading was still a means of conveying considerable Federal land into private ownership until the 1930's. But by this time most of the land suitable for farming under the existing conditions was in private ownership. The Taylor Grazing Act of 1934,[5] which stabilized the range livestock industry, brought the era of homesteading largely to an end.

The lands that remained in the unappropriated and unreserved public domain, outside of those in Alaska, were mainly the arid and semiarid grazing lands of the West. These lands, together with the national parks, forests, and wildlife refuges, and other similar Federal lands are the subject of this report.

Uses of the Public Lands

Just as the public lands themselves are diverse, the resources and uses of these lands also exhibit great diversity. Logging, mining, and grazing have always been important uses of public land. And recreation, watershed protection, and other uses of land in its semiwild state are becoming increasingly important. Some of the lands are still potentially valuable for agriculture and others have great potential value as a place for cities and towns to develop and expand. Magnificent scenery and incomparable wilderness also characterize much of the public land. These environmental resources are a national treasure for all the American people.

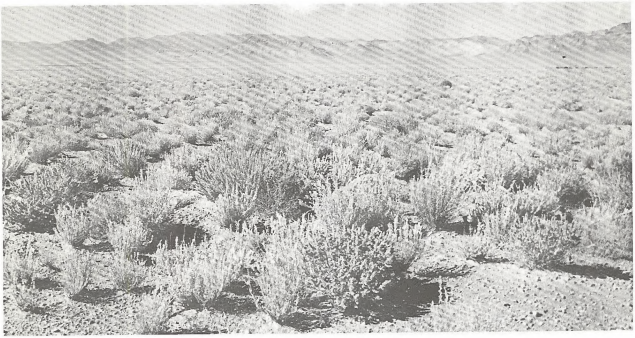
As did Gifford Pinchot, the Commission recognized that these resources have a direct bearing on the material well-being of all the American people, wherever they live. And we have also recognized their importance as recreational resources and as part of our heritage. The public lands have been important in the past and we are committed to the principle that they continue to be available to serve the Nation's needs in the future.

If one excludes Alaska, which possesses vast areas never subjected to anything more than casual human use, the most widespread economic use of public lands has been, and is today, for the grazing of domestic livestock. Over one-third of our public land is administered for grazing. While grazing is an extensive use of relatively low value lands, cattle and sheep grazed on the public lands are important to the livestock industry of the Nation and as the economic basis for many western communities.

Timber production is also a widespread use of undeveloped lands. The public lands include about 100 million acres of land classed as commercial forest, which is being managed to maintain a sustained yield of wood products. Because many of the national forests were reserved in the mountainous areas of the West, much of the commercial forest land has never been logged. But in recent years, the timber cut has increased to the point where the public lands now support nearly one-third of the Nation's total production. These forests are important as a

[5] 43 U.S.C. §§ 315 et. seq. (1964).

Diversity of Vegetation on the Public Lands: Pinyon-juniper region of the Upper Desert (top); sagebrush (center); and timber country west of the Continental Divide.



source of raw materials to the timber industry not only in the West, but throughout the eastern part of the country.

Like timber production, mineral extraction is an intensive use of public land. This is illustrated by the fact that in 1968 there were 8,245 producing leases, primarily for oil and gas, under the Mineral Leasing Act,[6] generating royalties to the Federal Government of over $92 million from less than 6 million acres. And an even smaller area is required for the production of hard minerals, such as copper and lead. Areas that were public lands when minerals were first discovered on them have contributed much of the Nation's production of hard minerals, and in some cases have been almost the sole source.

While not constituting public land interests in the usual legal or lay definitions of public lands, the mineral resources in the Outer Continental Shelf were included in the statutory charge to the Commission. Since the early 1950s, oil and gas from the Outer Continental Shelf has been of growing importance to the petroleum industry and the Shelf also promises to become a source of other resources in the future.

In addition to those areas held in fee by the United States, the Federal Government also owns mineral rights in approximately 62 million acres of land previously conveyed under the public land laws. These mineral rights have raised a number of environmental and equitable issues for consideration in the Commission's review.

In many cases, the most valuable economic use of public lands are occupancy uses dictated by essential human needs. Examples include rights-of-way for utility transmission lines and lease or permit rights for the operation of service facilities, such as hotels, service stations, and other business enterprises. Schools and other needs of state or local governments are also high value intensive uses, as is the use of land for cities and urban expansion. Public land often abuts western communities (such as Las Vegas and Phoenix), and as they grow, their spatial requirements for urban expansion make the adjoining public land increasingly valuable. We recognize that this use is likely to increase in the future as the rapidly growing areas of the West continue to expand.

Some recreation use is also highly intensive, with heavy concentrations of people at some times during the year. Yosemite National Park and the White Mountain, Angeles, Arapaho and Wasatch National Forests, for example, are subjected to very intensive use for recreation. And it is undoubtedly true that public land areas like these, which are readily accessible to metropolitan areas, will be utilized even more heavily in the future.

Much of the recreation use, however, is concentrated within less intensively used areas. Ski slopes and campgrounds on the national forests, the 7 square miles of valley floor at Yosemite National Park, and the area around the geysers at Yellowstone National Park bear the brunt of use in these areas. Much of the other recreation use on public lands is extensive, rather than intensive, in relation to the magnitude of the Federal public land areas and the remoteness of most of them from large population centers.

Wildlife of one form or another occurs on nearly all public lands, most of which can also be considered to be watershed lands. In most cases, these are broad, extensive uses with relatively little concentration of activity. But consideration must be given to them. Many of the arid public lands contain fragile soils subject to wind and water erosion. Often their principal value is that they constitute a major source of water for downstream communities. Consequently, their management for watershed protection and wildlife habitat purposes has become more important.

The Future of the Public Lands

Inevitably, the value of land changes with population changes and with the location advantages or disadvantages of the land itself. The highest and best use in many public land areas today is not the same as it was 30 years ago. Nor will it remain static over the next 30 years. Recognition of these rapidly changing values in relation to public land is implicit in the recommendations proposed by this Commission.

As we have proceeded with our task of reviewing the Nation's public land laws and policies, we have kept in constant view the great variation in public lands, resources, uses, and human needs. We have recognized the dominant role of Federal public land in the 12 far western states. In large measure the future of those states may depend on the adoption of sound public land laws and policies that will assure environmental quality and, at the same time, encourage healthy economic growth. We have also recognized the importance of these lands to other regions of the country. We are confident that the very diversity of lands, resources, uses, and needs that made our task so complex will assure that the public lands can continue to meet the changing, and perhaps unexpected, needs of the future.

[6] 30 U.S.C. §§ 181 et. seq. (1964).

CHAPTER TWO

To Whom the Public Lands Are Important

WE START with a strong belief that the public lands of the United States and their resources are important to everyone.

These lands are a natural heritage and national asset that belong to all of us. Each American should cherish them and seek to assure their retention and management or disposition—in the words of section 1 of the Commission's Organic Act—so as to provide "the maximum benefit for the general public."

How does one achieve "maximum benefit"?

How does one define "general public"?

Virtually all matters of governmental policy pose questions of relative advantages and disadvantages to different segments of our society. Public land policy is no different. To arrive at a reasonable judgment of what constitutes the maximum benefit for the general public requires evaluating and weighing many diverse considerations and interests.

As part of our research program, a staff study was undertaken to develop criteria and identify factors that could be used to assist us in making a consistent and rational approach toward defining the maximum benefit for the general public in public land matters. In addition to soliciting the views of the Commission's Advisory Council and the representatives of the 50 Governors, individuals and groups throughout the country were asked to contribute their recommendations. Not only was the question of maximum benefit for the general public a recurrent theme in many of the meetings of the Advisory Council with the Governors' Representatives participating, but three of our meetings with these advisors focused specifically on this subject. Many of the Commission's witnesses and correspondents also made recommendations.

We recognized that there cannot be a scientifically accurate manner of determining how the various justifiable interests can and should be weighed in order to assure maximum benefit for the general public. But we did find that it is useful to categorize and catalog such interests in order to determine their common goals and objectives as well as the conflicts among them. It is also essential to have an historical perspective on the use of the public lands in examining the role that these lands must fulfill today and in the years ahead.

The public lands have played a vital, though changing, role in the development of the Nation. Historically, they served as an inducement for the development of the frontier and, before the Civil War, as a major source of revenue. Today, the public lands must serve more complex and rapidly changing needs. Even though other aspects of national policy may overshadow public land policy, the public lands are, indeed, still important to all the people of the country.

We found, however, that recognizing the importance of public lands in our national life was only the first step in approaching our task of making recommendations that will serve the public interest. The wide range of suggestions received by the Commission, the very considerable differences in the apparent interests of various individuals and groups, and the great geographical variation in population relative to the public lands, all suggest that the general public must be recognized as a composite of many different interests. *One of our earliest conclusions was that the "general public" is in fact made up of many publics.*

The variety and range of those having a direct

interest in the retention, management, or disposition of the public lands was recognized by Congress in this Commission's Organic Act. As detailed in the Preface, provision was made for an Advisory Council to the Commission with members representative of the various interest groups, including representatives of Federal departments and agencies.

For clarity of analysis, and in an effort to assure ourselves that all justifiable interests were given consideration, we classified these interests and, as indicated in this chapter, identified the direct and indirect benefits and burdens that are afforded or imposed on them by public land policies. In doing so, we gave recognition not only to the direct user, whether a consumptive or nonconsumptive one, but also to those whose only interest might be an intellectual or emotional one. The Nation has learned that a threatened destruction of a wilderness or some other unit of natural beauty will have a tremendous impact on city dwellers thousands of miles away, even though they have no immediate expectation of themselves being able to visit such areas. While such reactions may sometimes have had a disproportionate impact on a decision in either the legislative or the executive branch, we believe that it can be placed in perspective in the weighing of interests that we have used, and that we recommend for future use in decisionmaking.

The interests we identified could have been categorized in many different ways. In analyzing the multiplicity of problems brought to our attention, we identified six interests or points of view which, in our opinion, comprise, in the aggregate, the general public with respect to public land policies.

Because the interests are not mutually exclusive, there is some overlapping and, therefore, duplication among them. An individual living in an area where public lands are dominant possesses the interest of each one of the different publics we have identified. Similarly, the concerns of the city dweller far removed from the public lands will, in many respects, be the same as those of a person who uses the public lands daily. Nevertheless, we find the identification of these separate interests necessary in order to work with them consistently in the analysis of public land policy.

Our six categories, each of which is discussed in detail below, are:

The National Public;
The Regional Public;
The Federal Government as Sovereign;
The Federal Government as Proprietor;
State and Local Governments; and
The Users of the Public Lands

It is difficult, if not impossible, to establish priorities among the concerns that a member of any group has regarding the public lands. Our enumeration, therefore, is to assure that all of them are given consideration. There is no intent to indicate priorities for weighting the various publics or the interests within categories.

The National Public

Although the public lands, as noted in Chapter 1, are not distributed proportionally throughout the Nation, they and their resources belong to all the people of the United States. Considered by many as playgrounds, the public lands annually provide millions of dollars in revenue for the Treasury of the United States, and much more in terms of the value of goods and services they produce. Despite the fact, noted above, that many desirable public lands are not readily accessible to everyone, it is obvious that all the people of the United States have certain common interests in them.

The national public has an interest in reducing the burden on taxpayers generally either by maximizing the net revenue from the public lands, or by assuring more efficient management, or both. The national public also has an interest that consumer goods and services derived from the public lands will be made available at the lowest possible price consistent with good conservation practices.

Each citizen, whether he has expressed it or not, wants the lands to be used and, to the extent necessary, retained, so as to maintain capability for future use. Timber, water, forage, and wildlife are among the most plentiful renewable resources of the public lands, but good management is required to increase or even maintain the ability of the land to produce them. Policies for the use of nonrenewable resources must take into consideration the interest of the national public that the resources be available when and if needed.

The national public, we assume, is concerned that the public lands should contribute to the maintenance of a quality environment. The interest of each person in the preservation of areas of national importance, such as national parks, monuments, or wilderness areas adds significance to his identity as an American. We have concluded and base our consideration on the assumption that the national public is also desirous that the public lands should be managed to enhance human and social values.

While the interests of the national public are not associated with any particular kind of use of the public lands, the national public is concerned that people who do use the public lands shall be treated equally.

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The Regional Public

Those who live and work on and near the public lands have a separate, identifiable and special concern with those policies that go beyond their interest as members of the national public. This was made quite evident to the Commission at the various meetings held throughout the country.

Identifiable concerns of regional publics occur wherever these lands may be located. The regional public in the area of the White Mountains National Forest in New Hampshire is as concerned about those public lands as is the regional public in the area of public domain lands in Alaska or in Montana. The interests of the various regional publics may be expressed in different terms, but there are common threads among them.

We found, for example, that the people living in the immediate vicinity of public lands have a strong desire that these lands contribute meaningfully to the quality of the environment in which they live. Scars from poorly planned rights-of-way or siltation of favorite fishing streams are environmental impacts that are with the regional public every day of the year. And so are the contributions of the public lands to their way of life. The child who has ready access to the use of public lands for fishing and hiking, and whose father derives an income from these lands, grows to have an abiding interest in them as a member of the regional public.

Taxes on private property ownership are a major source of revenue in public land states, particularly at the local level. They contribute significantly to public education and other governmental services in public land areas. It is in the regional public interest to have the Federal Government, as landowner, pay its fair share of the costs of adequate local and state governmental services.

Public lands and their resources are an important part of the economic base in at least 22 states. There clearly is a regional public interest in laws and policies which permit public lands and their resources to contribute to regional growth, development, and employment. There is also a companion interest that the public lands contribute to the stability of the community.

The Federal Government as Sovereign

As a matter of constitutional law, there is no legal significance in the different roles of the Federal Government as sovereign and as proprietor, but it is useful to separate these two institutional interests in public land. By doing so, we may distinguish those interests which relate to governmental functions from those which are similar to the interests of any other landowner.

Through all its powers, including regulation and administration, the Federal Government has great influence on the economy and other aspects of our national life which only incidentally relate to public land. If it is to achieve its broad constitutional responsibilities toward the national community, public land laws and policies should complement and implement other nationwide programs and policies.

Under the Constitution, it is the ultimate responsibility of the Federal Government to provide for the common defense and promote the general welfare. Public lands must be viewed as one of the tools that the Federal Government has available in pursuing its sovereign objectives. Control over public lands, for example, has been important historically in meeting various national defense needs. And the reservation of national parks and national forests from the public domain was accomplished to promote the general welfare of the Nation.

We believe the public lands can be used in a variety of ways to promote sovereign objectives. We also found that present and proposed uses of public lands must be examined carefully to ascertain whether they might interfere with the pursuit of sovereign objectives. The nature of modern society, the pervasiveness of the Federal Government's objectives, and the large number of laws and treaties that define Federal sovereign objectives complicate this task.

For example, the Federal sovereign interest lies in the efficient economic and noneconomic utilization of all the resources of our Nation and the avoidance of diversion of labor and capital to less productive enterprises. Consequently, from the sovereign point of view, laws and policies should be avoided which permit public lands and resources to be used in unfair competition with resources from other sources. Withholding of public land resources from development may in different circumstances either further or thwart the sovereign interest. The national interest requires users of public land and resources to contribute their fair share of Federal revenues. This principle precludes tax or pricing policies which unduly favor the users of public land. There is a sovereign interest in assuring access on equal terms to all potential users of the goods and services from those lands. The avoidance of monopoly and special privilege is the basic policy of many Federal laws, including, for example, the anti-trust laws.

There is also a sovereign interest in the maintenance of quality environmental conditions on public lands at least equal to those standards legislated for the Nation generally. It would be unfair, if not impossible, to enforce on the private sector standards higher than those established for public lands by the very government charged with their enforcement.

In a crisis, the sovereign responsibilities must over-

ride the objectives of all the others. However, in the absence of an emergency, policies and practices in connection with the retention and management or disposition of the public lands should be based on decisions made after taking into consideration all categories of interest, without assigning a higher priority to the interest of the sovereign.

The Federal Government as Proprietor

With about one-third of the country's land in its ownership, the Federal Government is a giant landowner. To a substantial extent, Federal ownership of the public lands is a coincidence of history. Most of these lands were obtained as our national territory expanded. Although some were dedicated to meeting specific needs, the remaining unreserved public domain lands are mostly those for which there was neither a Federal need nor demand under Federal laws providing for transfer into non-Federal control. Consideration of policies for these lands must generally start from the premise that they are not in Federal ownership because of some direct tie to Federal sovereign objectives.

In its role as proprietor, the Federal Government has much the same interest as other landowners. It wants at least the same degree of freedom as other landowners to manage and use its resources.

As a proprietor, the Federal Government wants to maximize the net economic return from sales of land and resources.

The Government, in the role of proprietor, has an interest in assuring the availability of sufficient funds to finance programs at a level that will result in a net monetary gain. It is also interested in the furtherance of research to achieve better use of the land.

The Federal proprietor, in addition, has an interest in controlling users of the land in order to maintain the resource base and minimize damage or adverse environmental impacts. In performing these and other functions, every owner seeks maximum freedom of action, and the Federal Government is no exception. As owner of the public lands, the Government wants to be free from control by state or local government and to pay no more for the support of local government than other landowners.

Before giving consideration to the noneconomic elements of the public interest that may require retention of land, the Federal Government, strictly from the standpoint of a proprietor, is interested in the relationship between the cost of administering lands and the income received.

State and Local Governments

In the absence of conflicting Federal legislation, state and local governments have constitutional jurisdiction over federally owned public lands for many purposes except where exclusive Federal jurisdiction has been ceded over specific areas, as discussed in Chapter Nineteen. Roads, schools, and police protection are examples. Local governments, in particular, obtain substantial revenues from property taxes to finance their functions, and state governments generally supplement these from other tax sources throughout the state as a whole. Federal property is immune from property taxes. State and local governments have an interest in obtaining an equitable share of their governmental costs from the Federal Government as a proprietor of public lands.

Other matters of state and local governmental concern can also be affected by Federal actions on the public lands. Zoning and use of non-Federal lands is affected by uses made of contiguous public lands. And activities on public lands can result in environmental pollution on or damage to adjacent or nearby non-Federal lands.

State and local governments that will be affected by land use decisions expect, as a minimum, that they will be consulted and have a voice in the Federal decisionmaking process. They expect the United States in that way to give consideration to relevant state and local programs and also to consider the impact of public land actions on state and local governments. These units of government want the United States to share with other landowners in bearing the costs of providing services, not only for the public lands but for the community as a whole.

It is in the interest of state and local governments that measures for the control of the health, safety, and welfare of the people apply equally within their boundaries, including public land areas.

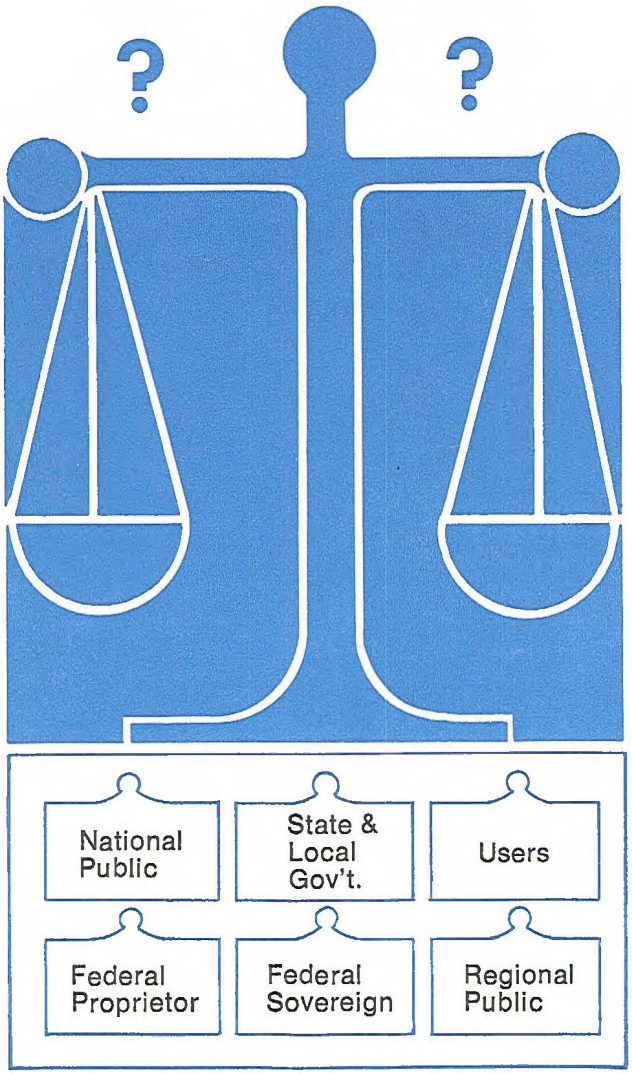
Because they use public lands for a public purpose, these units of government except a preference over competing potential users, and to purchase or lease public land at less than market value.

Users of Public Lands and Resources

Those who use the public lands as a basis for economic enterprise and those who use the public lands for personal recreation, together have an identifiable interest in the public lands. This is not necessarily a short-term interest, since all users are concerned that public land policies provide an opportunity for the satisfaction of future requirements as well as present needs.

While users as a group have a common interest in the public lands, different classes of users, and, indeed, individual users within classes, often must compete for the opportunity to use the public lands. Many of the controversies over public land policy involves such conflicts and they should be so recognized.

Users as a class have many interests. They want equal opportunity for access to public lands and resources in which they are interested, and equal treatment in their relations with the Federal Government and with other users. They are interested in having a voice in decisionmaking from the time that plans are made for general use through the chain of events that may involve decisions affecting their particular uses. In this latter connection, of course, all users desire prompt and fair consideration of disputes with public land administrators.



All users are interested in having the terms and conditions under which use will take place specifically stated in advance. Although such need is not always recognized by those who use the public lands for noneconomic purposes, we believe it has significance and should be taken into consideration by all users. In addition, all users desire a minimum of interference by the landowner, i.e., the Federal Government, in the manner in which the public lands are used.

Users also have a justifiable interest in seeking pricing and other conditions competitive with the use of other lands, together with security of investment, usually through assured tenure of use. As a corollary, they expect to be compensated if their use is disrupted or interfered with before the expiration of the term of the lease or permit of use.

Summary

We believe that it is in the public interest to encourage the highest and best use of the public lands to the end that they contribute the most in social and economic values. As national resources, they have little value unless their values are made available for the use of our people, either in Federal or non-Federal ownership.

Our efforts to find a formula for the maximum benefit for the general public are in response to that belief.

The Commission believes that the maximum benefit for the general public can most nearly be ascertained after a careful consideration and weighing of the impacts on the interests of the six categories we have identified and discussed in this chapter.

In establishing guidelines to determine whether lands should be retained and managed or disposed of, we are in search of the means of accomplishing the task rather than the end result. The end result, of course, is to achieve the maximum benefit for the general public and it is for that reason that we have focused so much of our attention on seeking criteria to assist in that determination.

We could find no better way to perform our complex task, and, having found it helpful, we recommend its use in future public land decisionmaking.

Planning Future Public Land Use

THE PUBLIC LANDS are a vast storehouse of potential resource benefits to the American people. Determining how these benefits can best be realized has been the task of this Commission. Our starting point is the recognition of the need for a cooperative effort between Congress, which has been charged with the Constitutional responsibility over the public lands, and the executive branch, through which the necessary implementing, "on the ground" actions must occur. Through the legislative process Congress should establish policies and goals for the public lands and provide the management agencies with authority for carrying out the programs necessary to implement the policies and attain the goals. The land use planning process determines how congressional policies and programs will be translated into specific management actions for individual land units. In its broadest terms, planning is preparation for informed decisionmaking by the Executive.

No matter what planning may mean in local or state governments, or, for that matter, in other aspects of Federal activity, we view planning in a simple context: It is the first step in translating statutory policies and programs into specific actions and, ultimately, into determinations whether individual land units will be managed or disposed of—and, if retained, the purposes for which they will be managed and used. Further, in this chapter, we are concerned only with land use planning and not with program planning, which treats with the timing and size of investments.

The recommendations contained in this chapter provide a foundation for those that follow throughout the report. The implementation of policies concerning timber, minerals, outdoor recreation, maintenance of environmental quality, and all of the other various aspects of public land policy is vitally dependent on the planning process and how well it works. When resources were abundant and demands upon them were relatively free of conflict, the nation may have been able to afford the luxury of an unplanned, crisis-oriented public land policy. But those days are far behind us. We are convinced that effective land use planning is essential to rational programs for the use and development of the public lands and their resources.

Planning is done at the national, regional, and local levels. It is intended to provide a guide for future decisions. Thus, plans developed by the public land agencies at the national level provide guidance for decisions at all levels, and those developed at the regional and local levels provide guidance for decisions at those levels. Our interest focuses on planning land uses at the regional and local levels because the effects of public land programs are felt most strongly there. And it is at those levels that the Commission noted the greatest public concern with the manner in which public land programs are being implemented.

The Commission is not satisfied with the manner in which land use planning is being carried out for the public lands. We find that many of the individual problems that led to the creation of this Commission and which emerged from our study program have their roots in an inadequate planning process.

We are concerned, first of all, that the Congress has not established a clear set of goals for the management and use of public lands. This is particularly true for the national forests and lands administered by the Bureau of Land Management.

Congress has also failed, in many cases, to provide a positive mandate to the agencies to engage in land use planning or to provide guidance concerning the matters which they should consider in determining whether or not to dispose of, or retain, Federal

lands and in deciding on uses of lands that remain in Federal ownership.

Further, we found a lack of coordination among Federal public land management agencies at the regional and local levels, between the Federal agencies and other units of government, and between Federal agencies and the owners of adjacent private lands. We discovered problems caused by the lack of coordination between public land agencies in nearly every aspect of public land policy that we reviewed.

Finally, we are concerned by the fact that the relative roles of Congress and the executive branch have not been clearly defined in determining land uses. The essence of land use planning is found in the classification or zoning of lands for particular uses. Congress has, in many cases, set aside large areas of public lands for parks or for other purposes. But the administering agencies also determine or limit land uses through withdrawals and land classifications. We believe that the roles of both Congress and the administrative agencies must be more clearly defined so that the limits of the discretionary powers are understood by the administrators and the public.

Goals for Public Land Use Planning

Recommendation 1: Goals should be established by statute for a continuing, dynamic program of land use planning. These should include:

Use of all public lands in a manner that will result in the maximum net public benefit.

Disposal of those lands identified in land use plans as being able to maximize net public benefit only if they are transferred to private or state or local government ownership, as specified in other Commission recommendations.

Management of primary use lands for secondary uses where they are compatible with the primary purpose for which the lands were designated.

Management of all lands not having a statutory primary use for such uses as they are capable of sustaining.

Disposition or retention and management of public lands in a manner that complements uses and patterns of use on other ownership in the locality and the region.

A congressional statement of policy goals and objectives for the management and use of public lands is needed to give focus and direction to the planning process. Although Congress has established goals in the statutes setting aside and providing for the administration of national parks, wilderness areas, and wildlife refuges, it has not provided adequate goals for lands not having a clearly defined primary purpose. It is on these lands, primarily those managed by the Forest Service and Bureau of Land Management, that absence of statutory goals has led to major problems.

In the absence of legislative statements of policy objectives and appropriate priority rankings, the land management agencies have formulated their own goals. This has occurred not only when policy objectives have not been provided by Congress, but also when the objectives have been stated in very general terms.

The reasons for the lack of statutory guidance lie in the historic pattern of development of public land policies and goals. For many years our national policy was to make public lands generally available for disposal—for agricultural settlement, for mineral development, as grants to the states for various purposes, and to entrepreneurs willing to provide the public improvements to develop the West. The withdrawal or reservation of public lands was the only way in which land disposals could be controlled in a planned way.[1]

During the 19th century Congress enacted many statutes authorizing the withdrawal of specific lands from the operation of these disposal laws. Additionally, many other withdrawals and reservations were consummated by the Executive both with and without explicit statutory authorization.

Around the turn of the century our disposal-oriented policy began to change. It was evidenced by the extensive forest withdrawals by Presidents Harrison, Cleveland, McKinley, Roosevelt, and Taft, by the emergence of a National Park System, and by sweeping mineral withdrawals as a prelude to revisions of the mineral laws that provided a leasing system for oil and gas and certain other minerals. As a result of the controversy generated by the extensive forest and other withdrawals, Congress in 1910 had enacted the Pickett Act[2] authorizing the President to make temporary withdrawals of public land for certain purposes, but prohibiting the closing of such withdrawn land to metalliferous mining.

[1] To "withdraw" public lands means to withhold them from settlement, sale, or entry under some or all of the general land laws for the purpose of maintaining the status quo because of some exigency or emergency, to prevent fraud, to correct surveys or boundaries, to dedicate the lands to an immediate or prospective public use, or to hold the land for certain future action by the executive or legislative branch of government. For example, a withdrawal "in aid of legislation" might suspend the operation of the public land laws with respect to specified lands until Congress could act on legislative proposals to include them in a national park or a reclamation project. A "reservation" is the immediate dedication of lands to a predetermined purpose and includes, in effect, a withdrawal.

[2] 43 U.S.C. §§ 141–143 (1964).

Management goals were not established for most of the withdrawn lands other than the national forests and national parks, and those that were established were broad and general.

Finally, in 1934, the Taylor Grazing Act [3] ended the era of unrestricted entry of the remaining unappropriated public domain and provided a classification authority to enable the Secretary of the Interior to determine how those public lands might best serve the public interest. Thus, by 1934, although numerous disposal laws remained on the statute books, Congress had armed the Secretary with broad authority to preclude the operations of all of them except the mining law, which had been excluded from the withdrawal and classification authority conferred in the Pickett and Taylor acts. Nevertheless, the Secretary continued to make withdrawals suspending the operation of the mining laws in certain situations without express statutory authority.

With increasing use pressures on all the public lands in the post-World War II period, Congress in 1960 and 1964 set forth broad public land management goals for the national forests and the unappropriated public domain administered by BLM. The Multiple Use and Sustained Yield Act of 1960 [4] declared that the national forests are established and "shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes," and directed the Secretary of Agriculture to develop and administer the renewable surface resources of the national forests for "multiple use" and "sustained yield."

The Classification and Multiple Use Act of 1964 [5] provided similar temporary authority for BLM administered lands and, in addition, directed the Secretary of the Interior to develop criteria to be used in determining which of those public lands should be disposed of and which should be retained in Federal ownership for multiple use management. But the basic thrust of both of these acts relative to the management of public lands was to give the agencies authority to manage the lands for recreation and other purposes for which prior authority was lacking or unclear.

The 1964 act was a recognition by Congress that the existing pattern, by which the old goals of the traditional disposal laws had generally been subordinated to broad Secretarial discretion to nullify them on a case-by-case basis in response to individual applications, was no longer an acceptable public land policy. Hence, it provided a new approach on an interim basis until this Commission could submit its recommendations. The new authority provided the Secretary with a broad planning charter with directions to identify those factors which ought to be considered in determining whether lands should be disposed of or retained in Federal ownership. Moreover, it gave him a broader authority to suspend the operation of the public land laws in aid of his classification function than he possesses under the authority conferred on him by the Pickett Act or the Taylor Grazing Act. However, the act did not provide goals for either disposal or retention and, with respect to retained lands, the multiple use authority which it conferred suffered from the same vice as its 1960 predecessor for the national forests—failure to specify or provide standards for determining priorities of use or guidelines for resolving conflicts.

The lack of clear statutory direction for the use of the public lands has been the cause of problems ever since Congress started to provide for the retention of some of the public domain in permanent Federal ownership. The relative roles of the Congress and the Executive in giving needed direction to public land policy have never been carefully defined, and this has been a source of friction throughout the years. As related to land use planning, the use of the executive withdrawal power has long been a problem; and in recent years administrative actions under the multiple use acts have created new problems.

The 1960 and 1964 acts were primitive first steps toward sound public land management, and as such they take on an historical significance because the start had to be slow. If viewed nonetheless as being "late" for their purposes, we must remember that both the Executive and Congress share the responsibility for failure to anticipate the needs of the public that dictated a form of management guide for these lands.

The Withdrawals Problem

Concern about problems associated with the "withdrawal" and "reservation" of public domain lands was strongly voiced in the deliberations which led to the creation of the Commission, and was a recurring subject of complaint in the Commission's public meetings. The contractor study of withdrawals indicates that they have been used by the Executive in an uncontrolled and haphazard manner.[6]

Withdrawals have been used since the earliest days of the Republic when the President was given statutory authority to set aside land for public purposes such as military reservations, Indian trading posts, lighthouses, and townsites. During the 19th century

[3] 43 U.S.C. §§ 315 et seq. (1964).
[4] 16 U.S.C. §§ 528–531 (1964).
[5] 43 U.S.C. §§ 1411–1418 (1964).

[6] Charles F. Wheatley, Jr., *Withdrawals and Reservations of Public Domain Lands,* Ch. XI. PLLRC Study Report, 1969.

the process was used to keep land available for disposition under various grants. Eventually, the process began to be used for land and resource preservation programs. The extensive forest and mineral reservations referred to above were related to congressional action providing for the management of those resources. This was also a method to allocate public domain lands among various Federal agencies for the conduct of their programs.

Recent criticism of withdrawal policies has come primarily from economic user groups, such as the timber and mining industries, since many withdrawals curtail economic uses of the public lands to favor recreation or noneconomic values. Also, concern has been expressed by some members of Congress about some Executive withdrawals on the ground that the actions should be taken by Congress or were in disregard of statutory limitations. In short, the excessive use of Executive withdrawals has become a source of increasing controversy.

The Commission has considered this problem in all its dimensions, looking beyond the traditional legal arguments over the respective roles of the legislative and executive branches in this field. We find the problem rooted in shortcomings of both branches. It seems clear that the Executive's liberal use of the withdrawal power stemmed from a necessity to meet public land management needs for which existing public land laws were either inadequate or nonexistent.

Congress, on the other hand, did relatively little to remedy the statutory deficiencies which spawned the liberal use of the withdrawal technique, nor did it attempt any restraint through legislation other than on a piecemeal basis.

Following enactment of the Pickett Act noted above, in *United States v. Midwest Oil Co.*,[7] a 1915 case challenging the validity of a pre-Pickett Act withdrawal, the Supreme Court interpreted the failure of Congress to object to the practices of the executive branch prior to 1910 as acquiescence equivalent to an implied grant of power to make temporary withdrawals. The court did not then or since then rule whether the act imposed a limitation on the inherent withdrawal power asserted by the Executive.

It may be argued that Congress intended to circumscribe all preexisting withdrawal power of the Executive. However, the Attorney General in 1941 held that the Pickett Act limited the President's asserted nonstatutory power only with regard to temporary withdrawals, and that he could continue to make permanent withdrawals without statutory authorization.[8] Congress has not acted to modify that interpretation.

[7] 236 U. S. 459 (1915).

[8] 40 Op. Atty. Gen. 73 (1941).

At present Congress exercises the exclusive power over withdrawals for some single use purposes, such as national parks and wilderness areas. But with the exception of requiring congressional sanction for defense withdrawals in excess of 5,000 acres,[9] there is no statutory restriction on the asserted permanent withdrawal authority of the Executive. The only existing supervisory control is through an informal agreement of the Department of the Interior to notify the concerned committees of Congress of proposed withdrawals for nondefense purposes in excess of 5,000 acres.

As indicated by the preceding discussion, the use of the withdrawal power as a tool for land planning by the administrative agencies is ambiguous because its limitations are unclear. The continuing, and proper, concern of Congress limits the manner in which this tool is used, but congressional concern is uneven from time to time and place to place.

The "Multiple Use" Problem

Congressional actions setting aside some public domain lands for parks recognized that these areas could produce more than one kind of value, but had to be protected to assure that the primary value was not lost because of other uses of these areas.

Congress has established national parks "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." [10] To accomplish this objective, most nonrecreational uses are prohibited or sharply limited. Use of wilderness areas established by the 1964 Act [11] are restricted in much the same way.

A somewhat different concept has been used for wildlife refuges and ranges, and for national recreation areas. These areas are designated for a primary use, but other uses are permitted to the extent that they are compatible with the primary use.

On the remaining public lands, the national forests and the Bureau of Land Management public domain, Congress has not defined the primary purpose of use of the lands, but rather has provided the broad "multiple use" authority referred to above with only very general statutory guidelines. However, because of their ambiguity, these acts have failed in some ways to provide adequate guidance.

Arguments have also arisen over the application of the term "multiple use" to lands that are set aside for specific purposes, such as the national parks and

[9] 43 U.S.C. §§ 155–158 (1964).

[10] 16 U.S.C. § 1 (1964).

[11] 16 U.S.C. §§ 1131–1136 (1964).

wilderness areas. On the one hand, some say that these cannot be multiple use areas because statutes designate them as being set aside for a particular use. On the other hand, a variety of values flow from these lands.

"Multiple use" is not a precise concept. It is given different meanings by different people, as well as different meanings in different situations. We have listened to statements from diverse interests who all commended the idea of multiple use, but it was apparent that they were supporting different basic positions. This confusion permeates public land policy.

The 1897 Act [12] providing for the administration of the national forests provided the genesis of the term. This act provided that the Secretary "may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction." This authority enabled the Forest Service to regulate a wide range of uses on the national forests and over a period of time the Forest Service came to describe its activities as multiple use management.

The 1960 Multiple Use and Sustained Yield Act [13] for the national forests provides that decisions be made ". . . with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output." The act goes on to define sustained yield as ". . . the achievement and maintenance of a high-level annual or regular periodic output of the various renewable resources . . . without impairment of the productivity of the land." Thus, it is clear that some noneconomic factors are to be considered, although they are not specified, and that the future is to be considered along with the present. Beyond this, there is no statutory guidance except that the range of choice is limited in some cases by the operation of the General Mining Law under which a mineral interest may be initiated without a prior administrative use decision.

The Commission believes that the meaning of the term "multiple use" as a general expression of land use policy should be distinguished from the manner in which land use and management actually occur in a particular area.[14] We recognize that nearly all public lands are capable of producing a variety of values, but we do not believe that this means that these lands are necessarily managed for multiple purposes. It is also our belief that multiple use has little practical meaning as a planning concept or principle.

We do, however, believe that the term can be used meaningfully in a descriptive sense to describe the operation of present public land policy under which (1) national forest and unreserved public domain lands are managed for a variety of goods and services, and (2) the administrative agencies determine which use shall be made of the lands in each situation, since no statutory preference is specified.

We believe that our recommended goals for public land use planning, which summarize many of the specific recommendations of the Commission in this chapter and elsewhere in the report, will, when implemented, provide the public land management agencies with a sense of direction that is now lacking in their planning efforts. Further, these goals will communicate Federal intention and provide the public with a clearer idea of the basic policy framework under which each major class of lands is to be administered and the kinds of uses that can be made of each class of lands.

Land Use Plans

> Recommendation 2: Public land agencies should be required to plan land uses to obtain the greatest net public benefit. Congress should specify the factors to be considered by the agencies in making these determinations, and an analytical system should be developed for their application.

Congress has not provided the agencies with clear policy objectives, directives to engage in land use planning to accomplish those objectives, nor general guidance as to the kinds of factors to take into account in the land planning process. Nevertheless, the agencies have not carried out their planning and decisionmaking in a vacuum. They have recognized, generally in an uneven and less than comprehensive fashion, the necessity to consider various factors and viewpoints relevant to their land use decisions.

The Forest Service has employed a rudimentary zoning system on the national forests for many years. However, the recently adopted Bureau of Land Management planning system appears to be more sophisticated, although it has not yet been fully implemented.[15] In the Classification and Multiple Use Act of 1964 [16] Congress directed the Secretary of the Interior to determine which of the public lands should be "classified" as suitable for either disposal or retention for multiple use management. This planning directive was to be implemented pursuant to "criteria" to be developed

[12] 16 U.S.C. § 551 (1964).

[13] n. 3, supra.

[14] See Commission staff with consultants, *Federal Public Land Laws and Policies Relating to Multiple Use of Public Lands.* PLLRC Study Report, 1970.

[15] Herman D. Ruth & Associates, *Regional and Local Land Use Planning,* Ch. IV. PLLRC Study Report, 1970.

[16] n. 4, supra.

by the Secretary and issued as regulations. In making his determinations, the Secretary was to give "due consideration to all pertinent factors including, but not limited to, ecology, priorities of use, and the relative values of the various resources in particular areas." The Secretary has published "criteria," and BLM has issued additional detailed instructions to its field personnel specifying the factors to be considered in making land use planning decisions.

BLM's recent efforts appear to require consideration of the following general categories of factors in varying degrees: physical and locational suitability of the lands or resources for obvious purposes; supply of resources and demand for resource products; communities and users dependent on the public lands and resources; environmental factors; impact on state and local governments; efficiency of resource use and sustained yield of renewable resources; and regional economic growth.

We have profited by this implementation of the Classification and Multiple Use Act and endorse the general planning approach embodied in that system. It is now time for Congress to rely on this experience by establishing legislatively those factors that should be considered in all Federal land use planning. The factors identified in the preceding paragraph provide an adequate starting point. While we recognize differences in the goals being pursued by some of the public land agencies, we believe that these factors can serve all of the agencies equally. To be meaningful, this process should be standardized with common units of measurement and a system for the comprehensive analysis of the factors considered, so that a more consistent effort among the agencies will result.

We believe maximization of net public benefits to be a suitable overall objective for public land management and disposition. It is clear to us that this objective can be served in some cases by retention of public lands and in other cases by disposition of public lands into non-Federal ownership. We also note that the concept of net benefits implies a comparison of the benefits of a possible course of action with the costs of following this course. "Public benefits" includes all segments of the public and their interests as defined in Chapter Two. This standard would measure the overall primary and secondary benefits that are generated by a particular mix of uses against the primary and secondary costs. The Federal land administering agencies do not attempt this type of analysis in public land administration today. We recognize that the terms "benefits" and "costs" have a decidedly economic ring, but we do not intend by the use of these terms to place emphasis on economic uses in resource allocation planning to the exclusion of other uses and values. It is essential to give full consideration to noneconomic factors in this planning process, and many of our recommendations elsewhere in this report, particularly in connection with environmental quality, fish and wildlife, and some forms of outdoor recreation, are directed to this important end.

Decisions on the use of public lands that will maximize the "net public benefit" require considerable information, often of a sophisticated nature, and a framework for using the information. We have reviewed the efforts of the executive branch to institute its Planning, Programming, and Budgeting Systems approach (PPBS) to program decisions for public lands, and we recognize that problems have been encountered in developing a framework.[17] We also note the problems we have had in obtaining some data relating to public land programs. While it is easy to get information in almost unlimited quantities, it is difficult to get information that is truly of value in making many kinds of decisions. We have found that it is especially difficult to get information for use in weighing choices between economic uses of the public lands, such as timber and forage production, and other uses, or protection of environmental values.

As set forth in the Preface, the Commission was required by law to "compile data necessary to understand and determine" both current and future demands on the public lands. In meeting this statutory requirement, we examined in great detail both the present uses of the public lands and possible changes in these uses based on projected increases in the nation's consumption of commodities that are produced in part on the public lands.

We approached this task with an open-minded, yet somewhat skeptical, attitude. It seemed possible that direct comparison of probable future national demands for various commodities might provide a basis for establishing priorities among uses of the public lands. However, our review of the work that had been done by others in projecting demands for natural resources indicated that the results were almost always disappointing if judged on this basis. We found that projections of national demands are useful primarily as they provide a framework for considering likely regional demands. At the regional level, good information on the current demands being placed on public lands and the probable changes that will take place are vitally important to making good land use decisions.

We also reviewed an analysis prepared for us of the impacts of various uses of the public lands on regional economies.[18] This is another area that has long been

[17] Commission staff with consultants, *Organization, Administration, and Budgetary Policy*. PLLRC Study Report, 1970.

[18] As part of the review program, the Commission staff designed a number of studies to provide information relevant

of concern in public land decisions, particularly where the decision involves a change in land use from an extensive use to an intensive use or from an economic use to a noneconomic use. In the past, this has also been a matter of concern when the change in land use would have affected direct payments to state and local government.

We found it impossible to make a comprehensive analysis of the regional and local economic impacts of public land uses. The techniques for such analyses, which are comparable to those used by the Department of Commerce in preparing the national input-output tables associated with its national income measurements, are expensive and require vast amounts of data. But a good deal of work has been done by universities and other research organizations that can provide a basis for regional analyses in a number of areas.

Our approach to this matter was to have analyses prepared for us on the regional economic impacts of public land uses and possible changes in such uses for two areas, the upper Colorado River Basin and the State of Washington. The technique that was used is regional input-output analysis, which we have found to be the only approach that provides a reliable basis for making comparisons of economic impacts for different land uses. We considered the results of these analyses at various points in our review, and believe that this technique has a proper place in land use planning.

We intend the factors and procedures suggested above to be the primary basis for land use decisions generally. These decisions should in all cases be made at the local level and in most cases should lead to clear choices among alternative land uses.

However, for those limited situations where choices among conflicting uses cannot clearly be made after application of this system, Congress should attempt to provide guidelines that could be used to resolve such conflicts. This would give the agencies the backing of Congress in making these "ultimate" decisions.

We examined several possibilities. One approach would be to establish firm preferences among uses such as mineral development, timber harvesting, and outdoor recreation. This technique is used for resolving conflicts among uses of water under state water codes. This would require that Congress examine at the national level the various needs of the country, the capabilities of the public lands to meet these needs, and the relationship of these capabilities to the potential of the non-Federal land base. This would be an exceedingly complex task. It is unlikely that a consensus could be reached as to what constitutes a reasonable set of priorities that could be applied uniformly throughout the country, under a variety of specific resource and needs conditions, and over a reasonable period of time.

Another approach would be to establish statutory standards reflecting value judgments as to the prevailing importance of various broad objectives served by the public lands that are not already designated for a primary use. We considered three possible general standards that could be used.

First, a preference could be stated for uses that contribute most to regional economic growth. Most of the classes of land to which this guideline would apply have never been designated as serving a specific national purpose that would be predominate over a regional or local economic objective. Consequently, it could be concluded that, even though they are retained in Federal ownership, the use of such lands should be directed primarily at meeting regional development needs. Application of this standard would not necessarily mean that economic uses such as timber harvesting or mining or grazing would always be favored over other land uses such as recreation. Recreation may in fact generate greater economic benefits to the particular locality in some circumstances than any market-oriented resource use. The agencies would probably have to work with well developed input-output models, such as we have just discussed, to have the necessary information for making resource use choices based on this guideline. This standard, of course, does not imply decisions by the administrator that would ignore environmental values and acceptable standards of resource use and treatment.

Second, nonmarket values, e.g., fish and wildlife, and watershed protection, might be favored over economic values. This standard would reflect a value judgment that: (1) the primary reason for continued Federal control of these lands is to see to it that such uses are always given full consideration along with logging, mining, and other market uses of land; and (2) since there is no well-established market mechanism to allocate land resources to these uses in the private sector, the fact of Federal ownership must be recognized as a necessary substitution for the imperfection in the market.

Finally, a third standard would favor uses that appear likely to generate the lowest degree of environmental degradation, or contribute most to environmental enhancement. This standard would avoid the question of what specific uses are more important than others. Although it might tend to

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to these areas of Commission consideration: Consulting Services Corporation, *Impact of Public Lands on Selected Regional Economies.* PLLRC Study Report, 1970; Robert S. Manthy, *Probable Future Demands on Public Lands.* PLLRC Study Report, 1970; Robert R. Nathan Associates, *Projections of the Consumption of Commodities Producible on the Public Lands of the United States 1980–2000.* PLLRC Study Report, 1970; Commission Staff, *Inventory Information on Public Lands.* PLLRC Study Report, 1970.

favor nonmarket uses, this would not be true in all cases. Within either use class, it would prefer those with the most favorable impact on the environment.

We are not able to endorse any of the three approaches, nor do we suggest that others might not be devised to be used individually or in combination. Much more refinement and consideration of such preferences is necessary before Congress can establish, if at all, national guidelines for use in cases of otherwise irreconcilable conflicts in land use planning and decisionmaking.

Disposals

Recommendation 3: Public lands should be classified for transfer from Federal ownership when net public benefits would be maximized by disposal.

We have approached the issue of whether public lands should be retained and managed not as a question of public land policy objectives, but rather as a matter of means to accomplish "the maximum benefit for the general public." Early in our deliberations we reached agreement that we were opposed to wholesale disposal of the unappropriated public domain, as had been recommended by the Garfield Committee in 1930.[19] Rather, we determined that our recommendations for disposal would be on a selective basis, keyed to the highest and best use of the lands and the private or state and local governmental need for them. Similarly, we decided that wholesale retention in Federal ownership for its own sake or for historic reasons was not a sound policy. In line with that policy, and while recognizing that the National Forest System is in the forefront of exemplary public land management in many ways, we concluded that limited disposals of national forest lands would be appropriate in certain circumstances.

Throughout this report we are recommending that public lands chiefly valuable for specified purposes be made available for disposition on certain conditions and to a limited extent, particularly for grazing domestic livestock, intensive agriculture, mining, some occupancy uses, and the provision of outdoor recreation opportunities by state and local governments. The case by case decisions as to whether particular public lands will be disposed of or retained to meet public land policy objectives will be made under the improved land use planning procedures we recommend in this chapter.

Management

Recommendation 4: Management of public lands should recognize the highest and best use of particular areas of land as dominant over other authorized uses.

Existing law governing the allocation of public lands among their many possible uses is deficient in two principal respects. First, the laws providing for use of lands designated by Congress for primary uses leave the relationship between the primary use and other possible uses uncertain. Second, although the multiple use acts provide clear authority for the Forest Service and BLM to consider and permit any and all of a number of possible uses, they provide little guidance as to how the public lands should be allocated to various uses.

As to lands set aside for primary uses, Congress should direct the agencies to manage them for secondary uses that are compatible with the primary purpose. National parks are generally established to provide for the preservation of their natural conditions and to provide for the enjoyment of the people. Wilderness areas are established to preserve the existing wilderness conditions. Other uses of these areas are not specifically provided for by law. Wildlife refuges and national recreation areas are established to provide for a single dominant use, but other uses are permitted where compatible with the dominant use. However, the status of these secondary uses, in the national parks and wilderness areas, is not wholly clear.

As a matter of fact, many uses other than the primary uses occur on all of these categories of land. General protection of the land results in the protection of watershed lands and of wildlife habitat, even if the lands are not managed specifically for these uses. Grazing of domestic livestock and mineral operations also occur in some cases on national park and wilderness area lands. And permitted secondary uses of national recreation areas and wildlife refuges are quite common now.

Inasmuch as all of these wildlands are potentially capable of providing a variety of goods and services, we believe the agencies should be given clear direction to manage primary use lands for such secondary uses as are compatible. As long as this can be done without impairing the area for its primary purpose, this directive will result in the efficient use of our limited land base. With careful control over land uses we believe that there will be little conflict with the basic concept of establishing primary use areas.

[19] The Garfield Committee, a Presidential study commission, recommended that the remaining unappropriated public domain lands be turned over to the states in which they are located, but that the mineral rights on these lands be retained by the Federal Government.

DESIGNATE PUBLIC LANDS FOR DOMINANT USE

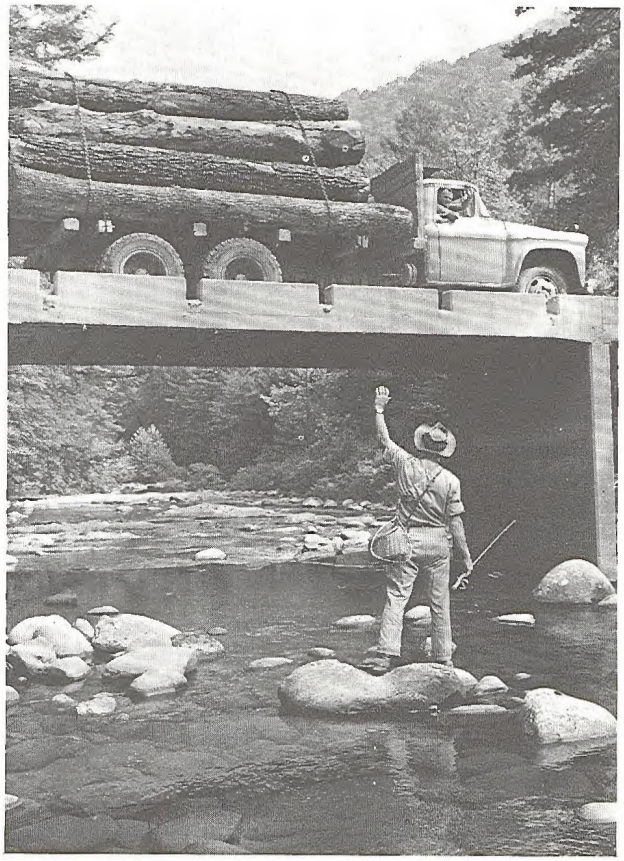
MANAGE FOR COMPATIBLE SECONDARY USES

With respect to lands administered by BLM and the Forest Service, we recommend that: (1) authorized uses be clarified; (2) statutory multiple use authority be provided to manage unreserved public domain lands for a variety of uses; and (3) a formal system of classifying for dominant uses, keyed to the highest and best uses of particular areas, be provided.

The Multiple Use and Sustained Yield Act of 1960 [20] and the Classification and Multiple Use Act of 1964 [21] specify a number of uses that can be made of the national forests and the unreserved public domain lands administered by BLM, respectively. The 1960 Act for the national forests specifies outdoor recreation, range, timber, watershed, and wildlife and fish. This act was for renewable resources but was not to affect the use or administration of mineral resources, and wilderness areas were defined in the act as consistent with its purposes. The 1964 Act for the unreserved public domain named industrial development, mineral production, occupancy, and wilderness preservation in addition to the list in the 1960 Act. The Commission recommends that authority for management of both classes of land should include all renewable and nonrenewable resources and uses, including but not limited to those specified in the 1964 Act.

In this connection, the Commission also believes that management must be responsive to changing demands on the public lands and not arbitrarily exclude some uses. Outdoor recreation use of the

Provisions for multiple-use of the public lands should be strengthened in the statutes by providing guidelines for their administration.



[20] n. 4, supra.
[21] n. 5, supra.

national forests is a case in point. Lands originally acquired for other purposes were made available—and properly so—for various kinds of winter sports developments. However, there must be flexibility so that, where possible, operators of winter sport facilities can also use the land in other seasons for other sports such as golf. We think that this approach is proper and should be extended to all nonspectator outdoor recreation activities. There should not be preconceived ideas or arbitrary limitations on the type of activities. Similarly, arbitrary limitations should not be placed on the kind of timber, for example, or livestock to be produced or grazed on the public lands. We see no reason, for example, why the Federal Government should assign the public lands the role of meeting national needs for sawtimber rather than some other class of timber. Rather, the agencies should be responsive to local, regional, and national needs in making land available for various uses.

The 1964 Act is a temporary multiple use management authorization which is scheduled to expire six months after the submission of this report. *We believe those lands that, as a result of the review and classification we recommend in this chapter, remain in Federal ownership under BLM administration, should be managed for the broadest range of values they can produce, consistent with the goals and objectives outlined in this chapter and elsewhere in the report. Consequently, we further recommend that BLM be provided permanent multiple use management authority.*

The Commission has found that existing land use planning procedures are to a large extent informal and, therefore, fail to provide users and others interested in public lands with assurance that plans will not be changed casually in response to what may happen to be the strongest pressures in a particular case. We recognize the need for a degree of flexibility in land use plans. But we also recognize that planning can be used to avoid irrevocable decisions that limit flexibility. If the public land agencies do not develop formal zoning where values are high and conflicts are likely, the public is likely to lose confidence in land use plans.

To provide the positive statutory direction and strengthening for "multiple use" management which we now find to be seriously lacking, we recommend that Congress provide for a "dominant use" zoning system. This would extend to some of the lands administered by BLM and the Forest Service the principle which Congress has already applied to the public lands generally in establishing certain areas for primary uses of national significance.

However, granting this kind of zoning authority to the agencies would eliminate the need for Congress to become involved in land use planning for areas of less than national significance.

The agencies in fact use primary use designation as a matter of course now. Not all of a national forest, for example, will be subject to a number or a combination of uses. Instead, within the total area of a national forest, there are established zones, each designated, in effect, for a dominant use to the total or partial exclusion of other uses. The result is that, while there may be a multiplicity of land uses within the boundaries of a national forest, its whole area is by no means subject to multiple use. If, for example, recreation is the dominant use in one zone, grazing may be excluded in the zone as well as all other uses considered to be incompatible with recreation. If this results in a single use of a given area, but other areas within the same forest are subject to other uses, the objective of multiple use is achieved under Forest Service practice, even in the unlikely case that each subdivision within the forest were zoned for a dominant but different use.

Our recommendation would give not only statutory recognition to the foregoing technique, but also direction to its use. Areas of national forest and unreserved public domain lands would be classified to identify those areas that have a clearly identifiable highest use. These would be specified as "dominant use" areas; other uses would be allowed where compatible. Thus, the same sort of relationship between dominant and secondary uses would exist on these lands as now exists, for example, between the dominant and secondary uses of national wildlife refuges and national recreation areas.

We are not suggesting that the dominant use zones be established by Congress. It should be clear that establishment of these zones on the ground is to be a function of the administrative agencies, arrived at through the improved comprehensive land use planning process we recommend in this chapter. However, we do believe that legislative endorsement of this technique is necessary to make it fully effective.

As a practical matter, all public lands will not be placed in one dominant use zone or another. It should be clearly established that only those areas that have an identifiable highest primary use at the time of classification should be placed in a dominant use category. The remaining lands would remain in a category where all uses are considered equal until such time as a dominant use becomes apparent.

This approach to providing for multiple uses on the ground will provide a sense of stability to those users of the public lands who fear a constant encroachment on lands devoted primarily to their use. It will reinforce the actions of the administrators so that they will not be subject to a barrage of claims from all sides that a particular use ought to be permitted or barred, all in the name of "multiple use."

It will also provide a guide for investment of Federal funds in management practices. For example, investments in timber management should be directed primarily to timber dominant areas, while investments in recreation should be directed primarily to recreation dominant areas, as we recommend elsewhere.

Comprehensive Land Use Plans

> Recommendation 5: All public land agencies should be required to formulate long range, comprehensive land use plans for each state or region, relating such plans not only to internal agency programs but also to land use plans and attendant management programs of other agencies. Specific findings should be provided in their plans, indicating how various factors were taken into account.

Legislative direction for land use planning by the Federal agencies is virtually absent. Nevertheless, as we have pointed out previously, the agencies do, in varying degrees, develop land use plans, and we commend them for their efforts. However, a statutory requirement to prepare such plans would give them greater credence and support and would assure that they are prepared in all cases as a matter of course. Further, formal plans will facilitate congressional oversight of the land use planning process and public scrutiny of the plans, as necessary ingredients of the planning coordination we recommend later in this chapter.

The plans, as part of a dynamic process, should not be inflexible, but subject to modification as conditions change. The lessons of city planning, which have long been preoccupied with "comprehensive" land use plans, demonstrate that static, fixed-arrangement plans are virtually useless to rapidly developing communities and areas with changing economic and social composition and, especially, changing values. Schematic land use plans are useful for crystallizing opinions and influencing expectations, but should be understood to be impermanent. The procedures by which they may be changed should be well known public information.

Agencies should provide specific findings in their plans which will clearly reveal how the general factors Congress has specified for consideration were treated. In this way other agencies and the public will not only be aware of the basis for the planning, but will also know what factors will influence changes in the original land use plan. Further, the information will be useful in determining whether the policy objectives and guidelines established by Congress have been properly and fully considered in the planning process.

Land Classification and Withdrawals in Land Use Planning

The basic concept of classifying land for particular uses is an old one that is well recognized in zoning practices by local governments. It also has been used for years in public land management in the form of legislative and executive withdrawals and reservations of public domain lands for specific purposes.

We have previously endorsed the principle of designating or classifying lands for primary or dominant uses in this fashion as an appropriate and orderly means of planning for public land use. However, there is an urgent need to make a new start in the overall planning process on the public lands under better Congressional guidelines and with new administrative tools.

Review of Withdrawals and Classifications

> Recommendation 6: As an essential first step to the planning system we recommend, Congress should provide for a careful review of (1) all Executive withdrawals and reservations, and (2) BLM retention and disposal classifications under the Classification and Multiple Use Act of 1964.[22]

At present virtually all of the public domain in all 50 states has been withdrawn from entry under one or more of the public land laws. Approximately 264 million acres are withdrawn under specific orders for particular purposes. Some 163 million acres were withdrawn in 1934 and 1935 in the 11 contiguous western states to implement the Taylor Grazing Act. Early in 1969 entries and state selection of the public lands in Alaska were suspended for a period of two years to enable Congress to consider legislation to resolve the problem of native claims.

We experienced great difficulty in trying to determine with any precision the extent of existing Executive withdrawals and the degree to which withdrawals overlap each other. We have found that the agencies do not have accurate records that show the purposes for which specific areas have been withdrawn and the uses that can be made of such areas under the public land laws.

A complete review of all existing withdrawals should be undertaken immediately to provide a basis for eliminating those that no longer serve a useful purpose, and for modifying those that are unnecessarily large in scope and area. This is a necessary step to "free" the public lands of encumbrances to effective land use planning for the future. It should be carried out as the initial effort under the formal withdrawal review program we recommend later in

[22] n. 5, supra.

this chapter. In the opinion of the Commission 10 years is a reasonable time for a review of all existing withdrawals and rejustification for renewal of those found to be required. Consequently, *we recommend that all existing withdrawals terminate at the end of a 10-year period unless expressly effected as new withdrawals under the laws and procedures we recommend.*

Reclamation and Petroleum Withdrawals

In order to carry out the recommendations we make in Chapter Ten relative to the retention and management or disposition of public lands for intensive agriculture use, *we recommend that priority be given to the review of reclamation withdrawals in situations where land may be needed for intensive agriculture and the land is arable under existing physical and hydrological conditions.*

The Bureau of Reclamation conducts many programs in the western states to bring supplemental water supplies to private lands already farmed and, to a limited extent, to develop Federal lands not currently under cultivation.

Some of the lands withdrawn for proposed reclamation projects may be desired now for private development with existing water supplies. A choice must be made between developing the lands at public expense in the future or making them available for private development and use at private expense now.

If all such withdrawn lands are made available for immediate private development only the best lands might be used and the remaining inferior lands may make the proposed reclamation project economically infeasible. These conflicting factors should be evaluated by an accelerated withdrawal review program. This would guard against extended withdrawals of land for proposed projects whose possible benefits cannot be realized, if at all, until so far into the future that they cannot match the benefits readily available from disposal of selected lands to private agricultural development.

In the process of reviewing all existing withdrawals, attention will be given, of course, to a review of the need for the naval petroleum reserves. We believe, however, that *early consideration should be given to a review of Naval Petroleum Reserve No. 4 on the North Slope of Alaska* under the same procedures that are established for reviewing other withdrawals.

BLM Classification

We have also found that the actions of the Bureau of Land Management under the Classification and Multiple Use Act of 1964 have paralleled to a considerable extent the liberal use of the withdrawal power by the public land agencies. In less than four years, under the 1964 Act, as of April 1, 1970, it classified 154.4 million acres of public land for retention and either classified or "identified" about 4.5 million acres for disposal. These classifications have a very substantial effect on land uses in the future. Despite the obvious need for careful planning, it is apparent that they were made in a hurried manner on the basis of inadequate information.

It was found that, for various reasons of expediency, the Bureau concentrated on large scale retention with little land use planning on its part and virtually none on the part of local and state planning authorities (although coordination was effected with them). Thus, the classifications were not preceded by necessary comprehensive efforts to gather information pertinent to resource capabilities and future development probabilities or by systematic attempts to state alternative uses within the context of regional or state development goals.

The Commission recognizes that BLM acted under a congressional mandate to make its classifications "as soon as possible," pursuant to an authority of *temporary* duration. Moreover, the agency was attempting to develop a comprehensive planning approach, which it previously lacked, concurrently with its disposal-retention classifications. Furthermore, the Bureau did consult with local interests and was, at least to some extent, responsive to the immediate desires of local agencies and inhabitants. Nevertheless, the extensive acreage classified for retention within the relatively short time involved is in itself evidence that the classifications were not preceded by comprehensive land use planning.

Fortunately, such classifications are not irrevocable. They can and should be changed as BLM's planning system becomes more refined and extensive and new development pressures arise. Moreover, Congress can change them anytime it sees fit. In any event, as an initial and necessary step in the implementation of the Commission recommendations on land use planning, the classifications under the 1964 Act should be carefully reviewed by both the Congress and executive branch.

Classification of National Forest and BLM Lands

> Recommendation 7: Congress should provide authority to classify national forest and Bureau of Land Management lands, including the authority to suspend or limit the operation of any public land laws in specified areas. Withdrawal authority should no longer be used for such purpose.

Land use "classifications" are currently a confusing amalgam of: (1) legislative and executive

"withdrawals and reservations" of widely differing categories; (2) "secondary" executive withdrawals within areas already set aside for particular uses by Congress or the Executive; (3) special purpose restricted use "designations" within withdrawn areas; and (4) Secretarial "classifications" of the unappropriated public domain lands for either disposal or retention and, for the lands proposed for retention, various provisions for limitation or exclusion of the operation of certain public land laws. We are convinced that this complex and confusing array of planning tools must be replaced with a simpler system.

As an integral part of the Commission's recommended land use planning and zoning system, the Forest Service and the BLM will need an effective classification authority. The kind of temporary authority provided the Secretary of the Interior in the Classification and Multiple Use Act of 1964 seems most appropriate for this purpose. To date it has been used primarily in a defensive manner to segregate large blocks of land from the operation of specified public land laws, usually without adequate information and planning, as we have pointed out. *We believe it can and should be used in a more positive fashion, after adequate planning, to classify lands for disposal or retention and to designate retained lands for appropriate dominant uses, in the manner of present national forest zoning.* In no event should it be used in the way that withdrawal authority has been traditionally employed by the Executive.

Since the 1964 Act applies only to BLM lands, the Forest Service must prevail upon the Secretary of the Interior to make a withdrawal of specified national forest lands when it wants to restrict the operation of any public land laws with respect to which it lacks final decisional authority. Our recommendation would give the administrators of both classes of multiple use lands similar authority. It also would provide a broader authority than is available under existing law to "segregate" lands from the operation of the public land laws. The Pickett Act [23] does not authorize the use of temporary withdrawals to preclude the operation of the mining law. Under the Taylor Grazing Act [24] and the blanket withdrawals made in 1934 and 1935 to implement it, the operation of all of the land laws, except the mining law, is suspended unless the Secretary "classifies" the requested land as suitable for the use applied for. The temporary 1964 Act,[25] however, provides that the notice of a proposed classification will segregate the subject lands from all forms of disposal except to the extent it "specifies that the land shall remain open for one or more of such forms of disposal." The actual classification, when made, obviously operates with like segregative effect. Since the act provides that the segregative effect applies to all public land laws, including the mining law, it is broader than the authority conferred on the Secretary in both the Pickett and Taylor Acts in 1910 and 1934.

Under the planning system we recommend, executive withdrawals would play a very limited role. If our system is properly implemented, particularly its public participation aspects, arguments would be shifted from the fruitless controversy over whether the Secretary possesses legal authority to suspend the operation of certain laws to discussions on the merits of particular planning actions.

Future Withdrawals Policy

> Recommendation 8: Large scale limited or single use withdrawals of a permanent or indefinite term should be accomplished only by act of Congress. All other withdrawal authority should be expressly delegated with statutory guidelines to insure proper justification for proposed withdrawals, provide for public participation in their consideration, and establish criteria for Executive action.

The withdrawal process involves a complex interrelationship between the legislative and executive branches of the Government as discussed earlier in this chapter. Under the Constitution Congress is given the exclusive authority for the disposition and regulation of Federal properties,[26] including the public lands. As indicated earlier, there are conflicting views on the limit of the Executive authority; Congress has delegated some of its authority; and Congress has exercised the withdrawal authority directly in many instances. We think it essential for Congress to specify clearly those kinds of withdrawals which should require legislative action and those which should be made by the Executive.

The Commission recommends that large scale withdrawals and reservations for the purpose of establishing or enlarging any of the following should be reserved to congressional action: national parks, national monuments, national historic sites, national seashores, national recreation areas and other units of the National Park System looking toward permanent use, national forests, national riverways and scenic rivers, national trails, units of the wilderness system, other areas set aside for preservation or protection of natural phenomena or for scientific purposes, units of the national wildlife refuge and game range system, other areas set aside for protection of birds or animals, and reservations for defense purposes.

We recognize the need for some continuing with-

[23] n. 2, supra.
[24] n. 3, supra.
[25] n. 5, supra.
[26] U.S. Const., Art. IV, § 3.

drawal authority to be lodged in the executive branch. However, this authority should be limited and exercised only within prescribed statutory guidelines. In the exercise of its land management functions, the executive branch is an agent of Congress and, as with any other agent, the extent of its power and authority should be clearly defined.

Delegation of the congressional authority should be specific, not implied, and should be made through the enactment of a single statute which clearly replaces all existing authority expressly or impliedly delegated.

We think that the Executive's use of withdrawals should generally be confined to the following broad purposes:

1. Allocation of public lands to nonresource use by other agencies, *e.g.*, relatively small areas for defense purposes.

2. Withdrawals in aid of legislation, such as for setting aside those areas of national significance mentioned above, water resource development projects, or special purpose legislation such as the Alaska native claims settlement legislation.

3. Emergency situations to preserve values that would otherwise be lost pending administrative or legislative action.

Executive withdrawals should be limited to a period of ten years duration, other than those in aid of legislation or for emergency purposes which should not exceed five years, subject to the provisions for review and renewal, where appropriate, discussed later in this chapter.

Agency standards are not definitive either in selecting land for new withdrawals or reviewing the status of past withdrawals. Although advisory services from other agencies may be available, qualified expertise to weigh conflicting resource benefits are often limited in the agency for whose benefit land may be withdrawn. The evidence available also indicates that little attention is paid to selecting areas from among alternative sites so as to minimize resource losses when public land is requested for exclusive agency use. Rather than be concerned with problems of multiple use benefits or resource development measures, Federal agencies obtain withdrawals which are far more restrictive than they need to be. These practices prevent the withdrawal system from being what it might otherwise be—an effective tool for proper land allocation.

An agency applying for a withdrawal should be required to establish the need for and effect of the withdrawal, particularly with respect to such matters as location, acreage required, intended duration, restrictions on use, and an evaluation of the impact on present and future uses and users and on the environment.

Mandatory legislative guidelines should require evaluation of the merits of proposed withdrawals and reservations, including express consideration of the relative value of conflicting uses, and all pertinent economic, environmental and social impacts. These are essential steps if the withdrawal process is to be consistent with sound land use planning.

Public notice of proposed withdrawals and participation of the public and state and local governments, at least through invitation to comment and through hearings in appropriate cases, should be assured.

Effective planning requires that all citizen interests have an opportunity to be heard and considered. Similarly, state and local governments are directly concerned with the withdrawal process. It affords an available tool to accomplish a segregation of public lands for necessary local facilities and is, therefore, a vital part of local and regional land use planning. Moreover, restriction on various kinds of uses can have a serious impact on the regional economy. Consideration of these interests, along with others, should be mandatory in the withdrawal process.

Regulations now provide for notice to the public of proposed withdrawals, opportunity to submit comments, and a discretionary hearing. *However, hearings are seldom held. We recommend that they be required upon request of a state.*

The officer exercising delegated authority should be required to state his findings with respect to justification for each withdrawal. The officer who makes the final decision on the application for withdrawal is now under no requirement to explain his action. Thus, the adequacy of the justification furnished by the applicant and the extent to which important factors have actually been considered are not matters of public knowledge. Meaningful judicial review or congressional oversight is dependent upon such disclosure. Furthermore, the lack of adequate public accountability has led to problems such as excessive size, indefiniteness of boundaries, lack of uniformity, and interminable "temporary" withdrawals. *At a minimum these findings should speak to (1) alternative sites, (2) weighted evaluation of existing and potential resource uses, including effect on the environment, (3) effects on present users, (4) effects on regional economy, (5) effects on state and local government interests, and (6) an explanation of the reasons for the duration of the proposed withdrawal as related to the purpose specified.*

The Pickett Act [27] delegated authority to the President to temporarily withdraw lands, but does not set any time limit on such withdrawals. Some temporary withdrawals made under the Act have remained in effect for almost sixty years. Other tem-

[27] n. 2, supra.

porary withdrawals in aid of legislation have remained in effect although (1) the legislation was never introduced; or (2) it was rejected by Congress; or (3) the purpose of the proposed legislation could no longer be realized.

With increasing pressure for the highest and best use of the nation's resources, *time limits on the duration of temporary withdrawals should not only be imposed as previously recommended, but the duration of proposed withdrawals within the mandatory time limits should be explained and clearly justified.*

Current uncertainty as to the effective date of withdrawals should be remedied by requiring that a withdrawal order be published within a definite time and specifically state its effective date.[28] This would conform withdrawal practice to that with respect to classifications under the Classification and Multiple Use Act and eliminate uncertainty about the validity of entries made before the specified date.

Knowledge that an application for withdrawal does segregate the covered lands from entry has frequently led to administrative inertia in completing action on the proposed withdrawal. The Commission is aware of the need for immediate segregation of lands for Federal programs in some circumstances. However, there appears to be no valid reason for substantial delay in completing action once an application has been filed. *We, therefore, recommend that a time limit of not more than 6 months be imposed upon the segregative effect of withdrawal applications and that safeguards be imposed against multiple application renewals.*

Review Program

Recommendation 9: Congress should establish a formal program by which withdrawals would be periodically reviewed and either rejustified or modified.

With nearly all public domain land now subject to some form of withdrawal, a continuation of these withdrawals in their existing form could defeat the purpose of the Commission recommendations. Therefore, it is essential to the operation of a new withdrawal system that existing withdrawals be phased out and reinstated where warranted under the new system.

Only in one period of time—1956–1961—has there been a vigorous program of withdrawal review. This did produce a relatively significant number of revocations or downward adjustments in the size of outstanding withdrawals while it was operative. However, the authority of the Secretary of the Interior to effect modifications or revocations of withdrawals of lands administered by an agency outside the Department of the Interior is limited. Existing procedures give the administering agency a veto power over any modifications or changes in a withdrawal made for its benefit. Thus, the effectiveness of any agency review is dubious unless legislation is enacted requiring mandatory reconsideration on a periodic basis. The responsibility for review and, where required, the modification and termination of withdrawals, should rest with the same officer who is given the delegated authority to effect withdrawals. Agencies having the administrative jurisdiction over withdrawn lands should be required to supply information periodically, at least once every 5 years, concerning land uses and a justification for continuance of each withdrawal. *A comprehensive periodic report of the findings made by the reviewing agency in respect to continuances and renewals should be submitted to Congress.*

If any agency desires to renew a withdrawal for a period of more than ten years from the date of the initial withdrawal, renewal should be subject to legislative approval. This could be done either by Act of Congress—possibly an annual omnibus act—or by allowing the officer executing the delegated power to renew such withdrawals, subject to reporting the action to Congress with detailed justification, and neither house disapproving within a specified period of time.

Executive Withdrawal Authority

Recommendation 10: All Executive withdrawal authority, without limitation, should be delegated to the Secretary of the Interior, subject to the continuing limitation of existing law that the Secretary cannot redelegate to anyone other than an official of the Department appointed by the President, thereby making the exercise of this authority wholly independent of public land management operating agency heads.

In 1952 [29] the President delegated all of his withdrawal authority from all sources to the Secretary of the Interior, but with certain limitations. The delega-

[28] Under present practice, the filing of a notice of a proposed withdrawal with the appropriate land office and the notation thereof on the land office records is deemed the effective date of withdrawal. Although the notice of a proposed withdrawal is published in the Federal Register, the publication date is not construed as the effective date of the segregative effect of the notice. This position may well be inconsistent with sections 5(a) and 7 of the Federal Register Act which appear to require publication in the Federal Register as the effective date of a notice to the public. 44 U.S.C. §§ 305(a), 307 (1964).

[29] Exec. Order No. 10355, May 26, 1952, 3 C.F.R., 1949–1953 Comp., p. 873.

tion provides that no order affecting land under the administrative jurisdiction of another executive department or agency may be issued without the consent of the head of the department or agency concerned. Although any disagreement concerning the proposed order may be referred to the Director of the Bureau of the Budget for settlement, or, in his discretion, to the President, this has never been done in a formal manner. The President, in whom the existing powers are vested, cannot personally resolve these problems. The lack of final authority in such cases discourages a vigorous review policy by the Secretary. An exception to the Secretary's withdrawal authority is the Federal Power Act, under which the filing of an application for a preliminary permit or license for a hydroelectric project automatically withdraws all public land described in the application if within the purview of the Act. As a practical matter, these self-initiated withdrawals are subject to no preliminary review whatsoever. Our recommendation would remedy these problems. However, the centralization of the withdrawal power in the Department of the Interior raises several practical problems. The Department itself contains land-using program agencies, which expose it to complaints of a lack of objectivity when it reviews their individual withdrawals. Hence we recommend that such authority continue in a presidentially appointed official of the Department removed from the operating aspects of the Department's programs.

Coordination and Public Review of Public Land Plans and Programs

We have pointed out our concern with the lack of coordination in land use planning among the Federal agencies and between the Federal agencies and those of other units of government, as well as the general public. The failure to coordinate plans, and the resultant actions, leads to program duplication and to inefficient accomplishment of Federal and other governmental programs.

Our earlier recommendations to require the public land agencies to prepare comprehensive regional land use plans, and to specify the factors that were considered in preparing the plans, provide a basis on which land use planning can be coordinated. However, to assure that the agencies do, in fact, coordinate their planning, it is our belief that statutory direction is necessary.

The problem of coordination in land use planning has three closely related facets. First is the need to assure public consideration of proposed Federal land use plans by providing for effective public participation in the planning process before final land use decisions are made. The second concerns the need to bring together the separate land use planning activities of all Federal agencies within a geographic region. While the planning and program decisions of one Federal land management agency obviously affect the plans and programs of other Federal agencies in the same region, there appears to be little meaningful coordination among them.[30] The third facet of coordination relates to the need to encourage full consideration of the external effects of Federal land use policy on the regions to which the policies apply. Federal land use decisions obviously affect a wide variety of institutions outside the Federal agencies, particularly state and local governments. Thus, we believe that it is essential to bring these institutions into the land use planning process so that they will have a voice in decisions that affect their interests.

Public Participation

> Recommendation 11: Provision should be made for public participation in land use planning, including public hearings on proposed Federal land use plans, as an initial step in a regional coordination process.

One of the frequently voiced complaints at the Commission's public meetings was that the public has been largely excluded from the land management agencies' land use planning activities. Our contractor's study confirmed this deficiency, finding that most agency contacts with the public concerning land use planning are of an "after the fact" informational nature.[31]

We believe that the expression of multiple views and interests and their impact on Federal land use plans is fundamental to a democratic and meaningful planning process. It is essential to provide a direct avenue for citizen participation in the planning process, through the use of both public hearings and citizen advisory boards.

State and local governments have long recognized the importance and utility of public hearings, and have required them in connection with adoption or amendments of comprehensive plans and zoning ordinances. Congress and the land management agencies have not been particularly concerned about this problem, although the public hearings required by statute in connection with wilderness proposals under the Wilderness Act of 1964,[32] and the Bureau of Land Management's public meetings in connection with its classification program under the Classifica-

(Text continued on page 60.)

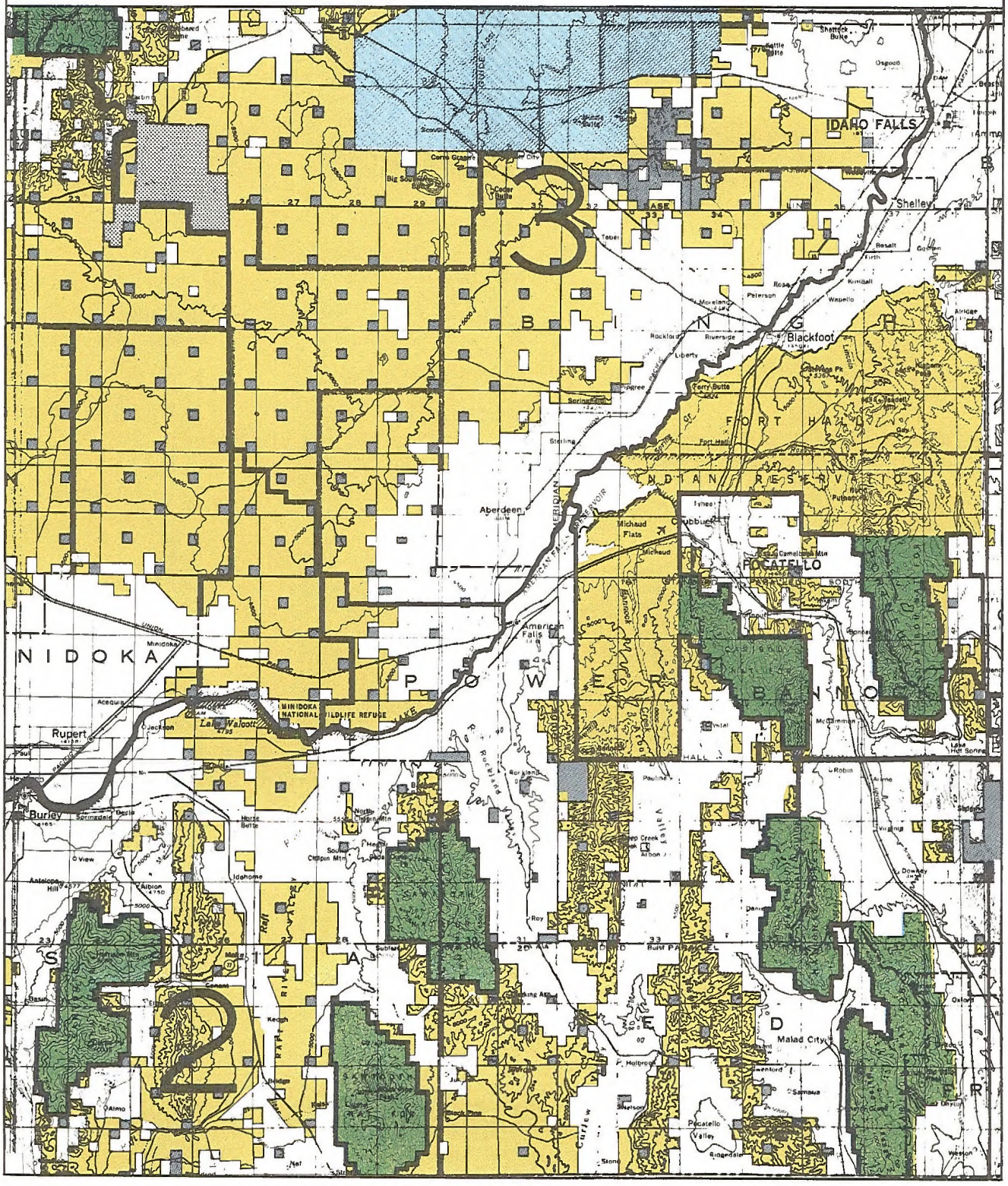
[30] Herman D. Ruth & Associates, *Regional and Local Land Use Planning*. PLLRC Study Report, 1970.

[31] *Ibid.*, Ch. III.

[32] n. 10, supra.

DIFFERENT CLASSES OF PUBLIC LANDS AND MANY ORGANIZATIONS MEAN COMPLEX PLANNING ARRANGEMENTS

Forest Service
Atomic Energy
State
BLM
Park Service
Private



Organizations Involved in Natural Resources and Land Use Planning in a Portion of Southeastern Idaho.

FEDERAL AGENCIES

DEPARTMENT OF AGRICULTURE

Soil Conservation Service—U.S.D.A. Work Units:

Burley	Shoshone	Hailey	Arco
Idaho Falls	Blackfoot	Aberdeen	Pocatello
Preston	American Falls		
Rupert			
Shelley			
Malad			

U. S. Forest Service—National Forests:

Caribou	Challis	Sawtooth	Salmon

Farmers Home Administration
Rural Development Council
Agricultural Stabilization and Conservation Service
Rural Electric Administration

DEPARTMENT OF INTERIOR

Bureau of Sports Fisheries and Wildlife: Wildlife Refuges

Minidoka Camas

National Park Service: Craters of Moon National Monument
Bureau of Land Management: Grazing Districts:

Burley District
Idaho Falls District
Shoshone District

Bureau of Reclamation
Bureau of Indian Affairs (Fort Hall Indian Reservation)
Federal Water Pollution Control Administration
Bureau of Outdoor Recreation
Bonneville Power Administration
Geological Survey
Bureau of Mines

ATOMIC ENERGY COMMISSION

National Reactor Testing Station

DEPARTMENT OF COMMERCE

Economic Development Administration

DEPARTMENT OF TRANSPORTATION

Federal Highways Administration
Federal Aviation Administration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Housing Administration
Office of Intergovernmental Administration and Planning

SMALL BUSINESS ADMINISTRATION

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Public Health

DEPARTMENT OF DEFENSE

Corps of Engineers
Coast Guard

STATE AGENCIES

University of Idaho Cooperative Extension Service Offices:

Cassia	Lincoln	Blaine	Bonneville	Butte
Jefferson	Minidoka	Bingham	Power	Bannock
Power	Franklin	Oneida		

Department of Public Lands
Fish and Game Department
Department of Reclamation
Water Resources Board
Department of Highways
Cooperative Area Manpower Planning
Cooperative Health Planning
State Planning and Community Affairs
Department of Parks
Department of Aeronautics

COUNTIES ENGAGED IN LAND MANAGEMENT PLANNING IN IDAHO QUADRANGLE

Board of County Commissioners—one in each of 9 counties

Planning or Zoning Commissions

Bannock County Development Council
Bannock County Zoning Commission
Bingham County Planning and Zoning Commission
Blaine County Planning Committee
Bonneville County Zoning Commission
Caribou County Planning and Zoning Commission
Cassia County Planning Commission
Jefferson County Planning Commission
Minidoka County Planning Commission
Minidoka County Zoning Commission
Oneida County Planning Commission

LOCAL GOVERNMENTAL UNITS ENGAGED IN LAND MANAGEMENT PLANNING IN IDAHO QUADRANGLE

Soil Conservation Districts

West Cassia	Butte	North Bingham
Blaine	East Side	Portneuf
West Side	South Bingham	Power
Central Bingham	Oneida	Wood River
Franklin	Minidoka	Jefferson
East Cassia	Mud Lake	

Ditch, Canal, and Irrigation Districts and Companies

Aberdeen-Springfield, Alliance, Big Lost River, Blackfoot, Blaine County, Burgess, Burley, Butler Island, Butte and Market Lake, Centerville, Corbett Slough, Danskin, Deep Creek, Dilts, Enterprise, Falls, Farmers Friend, Harrison, Idaho, Island, LaBelle, Long Island, Lowder Slough, Martin, McCammon, Miners, Minidoka, New Lavaside, New Sweden, Osgood (U-I Sugar Co.), Owners Mutual, Owsley, Parks & Lewisville, Parsons, Peoples, Portneuf-Marsh Valley, Progressive, Rigby, Riverside, Roberts Bench, Rockford, Rudy, Samaria Lake, Shattuck, Snake River Valley, Toponce, Trego, Watson Slough (two companies), Wearyrick, West Labelle, West Side Mutual, Wilkins, and Woodville.

Flood Control Districts

#1—Idaho Falls (Bonner, Bingham and Jefferson Counties)
#5—Rigby—Jefferson County
#7—Blackfoot and Bingham County

Local Highway Districts

Cassia County
Downey-Swan Lake
Lincoln County
Minidoka County
Power County

tion and Multiple Use Act of 1964,[33] are notable exceptions.

Explicit proposed land use plans, designed in part to make them available for public scrutiny, should be supplemented by a requirement for increased use of public meetings or hearings where land use plans would be explained and public reaction determined. Public notice of such meetings and notification by mail to interested groups, including local governments in the planning area, should be made a preliminary condition to public hearings.

The follow-up to public hearings could occur at several levels. Individuals and interest groups, of course, could present their views, including alternatives and counter-proposals, directly to the agencies as well as to Congress. Beyond this, however, state and local government planning officials would be available to pursue the interest of the local and state individuals and organizations they represent.

We also believe formally constituted advisory boards, on which we submit recommendations in Chapter Twenty, can serve a vital role in the planning process. Since they will be comprised of people in the region or locality for which the land use plans are being developed and will represent all of the principal interests affected by the decisions flowing from the planning process, we think it particularly appropriate for Federal land administrators to seek their advice on planning proposals, and *we recommend that consultation with advisory boards be required by statute.*

The role of these boards will be to advise the officials who are engaged in land use planning on the probable impact of the proposed land use decisions on the locality, to suggest viable alternatives that should be considered, and to provide the administrator with opinions, views, and information that is relevant to the planning operation. They should function actively from the inception of the planning process, starting before any plans have been developed, and should have a continuing role.

Federal Interagency Coordination

Recommendation 12: Land use planning among Federal agencies should be systematically coordinated.

The case for effective interagency coordination is simple—the Federal left hand should know what the Federal right hand is doing. We have found that there has been little regional coordination among Federal agencies. The agencies compete with each other in managing the Federal lands to meet the needs of the public in a broad sense, but with no given or derived objectives for each agency and with no congressional directive to coordinate either land use planning procedures, or operational programs in furtherance of the objectives. In many instances, there is not only duplication of services and facilities, but lack of concern for and the impact of one agency's program on those of other Federal agencies. Opportunities for using different classes of public lands for a specific purpose cannot be fully examined because the agencies plan independently.

Effective coordination requires that the agencies speak the same language and that there be a free interchange of proposed plans. When modifications are suggested by one agency to another, the suggestion should not require translation. Therefore, there should be common definitions, units of measurement, systems of classification, sources of information, and procedures for the collection and dissemination of information. This would provide a common language for land use planning among Federal agencies, and would facilitate external review and understanding of these plans. Discrepancies in, and inadequacies of, data would be more easily isolated, and program planning would be improved accordingly.

While a policy requiring circulation of proposed land use plans developed by individual agencies to each other may appear to satisfy the need for coordination, we believe this approach embodies the major weakness, that the various classes of Federal land involved have not been considered together from the inception of the planning process. Generally, the field administrator for each agency is working with a different set of program and policy assumptions, and he views his unit of Federal property largely as an entity isolated from surrounding private and other Federal land for policy and program planning purposes.

Unified planning for all Federal lands in a region or similar large area would permit coordinated application of policies and practices, as well as the synchronization of program action schedules that flow from these land use plans. Opportunities for coordinated development of different forms of recreation opportunity between adjacent or intermingled national park, national forest, wildlife refuge and BLM lands could be examined. Habitat management planning and population level decisions for big game species that migrate among parks, forests, and grazing land can be synchronized with the other land use objectives for these different Federal lands. Seasonal shifting of livestock use between adjacent national forest and BLM grazing lands could be more effectively scheduled. Routing and construction scheduling of highways, and general access to and through intermingled Federal lands, could be accomplished more effectively.

Controversies between land administering agencies

[33] n. 5, supra.

that arise over differences of opinion concerning desirable land use, such as occurred in the case of the North Cascades and Mineral King proposals involving national forests and national parks, would be minimized by more effective cooperation in land use planning from the outset.

Congress should require and make provision for the creation of new arrangements and procedures for unifying planning for different kinds of Federal lands in a region. While our study shows that a variety of approaches, such as regional interagency committees or river basin commissions, may offer some possibilities for improved coordination, it is clear that all existing techniques need substantial refinement and strengthening. Both the field committee system used for 20 years by the Department of the Interior, and the interagency committee system employed by the Federal Government to coordinate Federal natural resource program activity on a regional scale have significant weaknesses. They have no staff capacity for independent planning and, more importantly, their authority to reconcile the divergent plans and programs of their member agencies is nonexistent. These organizations engage in resource use analysis and planning much less than they do in exchanging and reviewing their program plans and budgets to carry out resource plans already decided upon.

We think that the Secretary of the new department we recommend in Chapter Twenty should give consideration to possible organizational unification at the regional level under the policy direction of a single administrator, in order to provide the opportunity to plan effectively for all classes of public land in a region. It is quite possible that a successful mechanism may only evolve through extensive trial and error experimentation. Recognition of the need is of paramount importance, however.

State and Local Roles

Recommendation 13: State and local governments should be given an effective role in Federal agency land use planning. Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state or local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning.

There are two basic reasons for involving state and local governments in Federal land use planning. First, these governments represent the people and institutions that will be most directly affected by Federal programs growing out of land use planning. For example, disposal of land to private ownership may involve substantial service burdens to state and local government, such as education and highway costs, which are not matched by a corresponding increase in taxes.

Secondly, the objectives of land use planning can be frustrated unless all land within the planning area is included, regardless of ownership. Land use decisions often have important economic and environmental impacts at the regional, state, or local level. A decision by the Forest Service to facilitate the construction of a pulp and paper plant by making national forest timber available to a proposed mill will have a significant economic impact, but it can also have a serious external effect on the surrounding community in the form of air and water pollution.

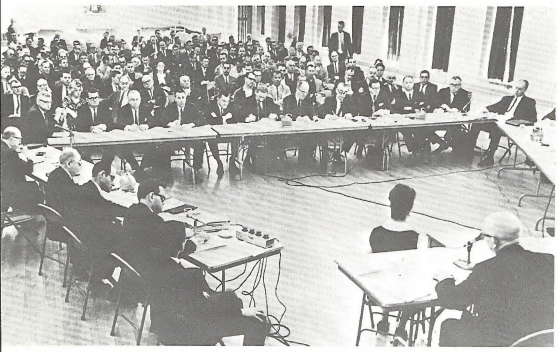
The Commission recognizes that there is a wide variation in the quality of the planning process as it exists at the level of state and local governments. In many public land areas, there is neither comprehensive planning nor zoning at the state or local level. Where either does exist, no attempt has been made to extend state or local zoning to cover Federal lands. One of the historical reasons for this disinterest has been that the local authorities had little reason to believe that they would influence the land planning of Federal agencies, although in more recent years some progressive local authorities have affirmatively zoned Federal lands with the cooperation of Federal agencies.

Involving state and local planning groups in joint land use planning efforts with Federal agencies could have a significant effect in promoting a more active interest in land use planning by state and local governments. To us, broad gauged land use planning at all levels is vital if our nation is to meet the challenge of the next three decades to meet our increasing resource and environmental needs from a fixed land base.

Awareness of the necessity for more aggressive land use planning and zoning in the states has changed significantly within a very few years. Some states have enacted statewide zoning and land planning laws, embracing rural and urban areas alike, and are committing funds and political action to undertake the complex task called for by these laws. We foresee a rapid change in their interest and capability to bring all the area within their borders under a comprehensive planning effort.

It is imperative that the use, development, disposal, and acquisition planning for Federal lands be an integral part of this effort, and that the institutions and procedures that control planning for Federal lands be adapted to facilitate the effort.

Until enactment of the Intergovernmental Co-



The public affected by land-use planning deserves a voice in such procedures. Federal administrators should hold public hearings (left), consult state and local government officials (center), and seek the counsel of advisory boards (right) as a vital part of the planning process.

operation Act of 1968,[34] statutory requirements to coordinate the planning and design of direct Federal programs that have a significant state, local, or regional influence were unevenly developed. Federal water resources project proposals formulated by the Corps of Engineers, Bureau of Reclamation, and the Soil Conservation Service were sent to the states for comments and views but, before enactment of the Water Resources Planning Act in 1965,[35] project coordination was little more than after-the-fact action. The states seldom had an opportunity to participate in project formulation. The 1965 Act provided the legal basis and organizational arrangements —the joint river basin planning commission—for states to participate with Federal agencies in water resources planning each step of the way from assessment of needs to multiproject design and analysis.

Statutory requirements for coordinating Federal public land activity with states and local government have been confined primarily to notification and soliciting of state views on proposed Federal land acquisition, with state approval required for some kinds of purchases. Beyond this, there has been little exposure of the Federal comprehensive land use planning process or the plans themselves to state and local government.

Title IV of the Intergovernmental Cooperation Act of 1968[36] provides, in part, that the President ". . . establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development." The implementing regulations issued by the Bureau of the Budget[37] call for the establishment of procedures by Federal agencies administering programs for construction of Federal buildings and installations or other Federal public works, or for the acquisition, use, and disposal of Federal land and real property to assure:

1. Consultation with Governors, regional and metropolitan comprehensive planning agencies, and local elected officials at the earliest practicable stage in project planning in the relationship of any project to the development plans and programs of the state, region, or locality.

2. Consistency and compatibility of any such Federal project with state, regional, and local development plans and programs.

The Bureau of the Budget regulations also call for use of the state, regional, and metropolitan planning and development clearinghouses that have been established as part of the recent efforts to im-

[34] 40 U.S.C., §§ 531–535; 42 U.S.C. §§ 4201, 4211–4214, 4221–4225, 4231–4233, 4241–4244 (Supp. IV, 1969).

[35] 42 U.S.C. §§ 1962–1962d–3 (Supp. IV, 1969).

[36] 42 U.S.C. §§ 4231–33 (Supp. IV, 1969).

[37] Bureau of the Budget Circ. No. A-95, July 24, 1969.

prove intergovernmental coordination in planning, particularly for Federal grant-in-aid programs.

We fully endorse the intent of these efforts as they apply to intergovernmental coordination in public land use planning. However, there are several steps that can be taken to further the 1968 Act with regard to public lands that would assure early fruition of its intent with regard to bringing state and local government into the planning process.

To encourage state and local government involvement in the planning process in a meaningful way, as well as to avoid conflict and assure the cooperation necessary to effective regional and local planning, the Commission believes that consideration of state and local impacts should be mandatory. To accomplish this, *Federal agencies should be required to submit their plans to state or local government agencies.*

State and local zoning usually specifies uses permitted in designated areas. However, such zoning does not require any land owner to put his land into one of these uses against his interest or personal desire. Similarly, federal land agencies should not be required to permit a given use merely because the area has been so zoned by state or local authority.

On the other hand, federal agencies, as a general rule, should not allow uses on public land which are classified as undesirable under state or local zoning. There may be exceptions, however, and the federal agency should be authorized to allow such a use, but only when the agency makes a finding that overriding national interest requires the use.

The coordination which will be required if the Commission's recommendations are adopted is so basic and essential to effective public land use planning that it should be mandatory. Procedural requirements which are of sufficient importance to be dignified by statutory enactment should not be a matter of choice with the administering agency. If the adoption of such procedures is discretionary, and an agency chooses to ignore them, even the ability of the courts to intervene will be severely limited. *The Commission recommends, therefore, that Congress provide by statute that Federal action programs may be invalidated by court orders upon adequate proof that procedural requirements for planning coordination have not been observed.*

Financial Assistance to States

Recommendation 14: Congress should provide additional financial assistance to public land states to facilitate better and more comprehensive land use planning.

If the public land states and local governments are to play a significant role with respect to Federal land use planning, their planning will have to be far better than it is today. The Commission study found an uneven performance by state and local governments in conducting their own planning programs.

The nonexistence or low calibre of some state and local planning may be attributed among other things to budgetary problems. While some funds are made available to encourage planning activities by state

and local government under the Housing Act of 1954,[38] the availability of these funds is limited, and the Commission believes that, to the extent required, additional funds should be made available for planning encouragement in areas where Federal lands constitute a large part of the state and local land base. Federal funds should be available on a matching basis, with a major part contributed by the Federal Government.

Regional Commissions

> Recommendation 15: Comprehensive land use planning should be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act of 1965. Such commissions should come into existence only with the consent of the states involved, with regional coordination being initiated when possible within the context of existing state and local political boundaries.

At present there is little comprehensive regional or area wide planning. Except for a few county and regional efforts, no agency or combination of agencies—Federal, state or local—has developed broad plans integrating regional needs, land and resource use, public facilities, and development projects for both public and private lands within logical planning areas. Without such information and guidelines, there is no adequate way to determine the extent to which public lands can be used for the maximum public benefit. Therefore, regional coordination within the context of existing state and local political boundaries must be encouraged.

We believe the information clearinghouses that have been established in each state are not designed, staffed, or otherwise equipped to participate with Federal agencies in land use planning on the scale necessary to give adequate representation to state and local impacts and needs as they may be affected by public land use. While they could well provide the nucleus of a statewide land use planning effort that could speak with certainty for the state on the proposed plans for public land use, we believe a legally sanctioned institutional arrangement is necessary where the Federal-state-local interface can be brought into phase in public land use planning. Regional commissions created to facilitate continuous joint participation in land use planning would bring state and local planning and zoning for private and non-Federal public lands into a continuum with Federal land use planning, on a regional scale.

Although such an arrangement would not assure genuine integration of planning for different classes of Federal lands in the region as long as their regional administration remains organizationally separated, the regional commission arrangement would at least provide a single point of contact for states with the different Federal agencies engaged in planning. As long as the agencies remain separated at the field level, involvement of the state may, in fact, provide a point for bringing their diverse objectives in focus in public land use decisionmaking.

The river basin commissions created pursuant to the Water Resources Planning Act of 1965 [39] serve as the principal agencies for the coordination of Federal, state, interstate, local and nongovernmental plans for the development of water and related land resources in an area. Water resource development has predominated in the deliberations of the commissions established to date, and responsibility for related land resources has been narrowly interpreted.

Recognition of the regional nature of resources problems is of major importance in the land use planning process. The Commission recommends that regional commissions along the lines of the river basin commissions established under the 1965 Act be created, with the consent of the affected states, to encourage comprehensive land use planning on a regional basis.

The key element in the transition from an intrastate to an interstate regional planning organization will be provided by the recognized interdependence among state planning organizations. Thus, creation of interstate regional planning commissions must be timed to the needs of the various geographical regions as the states of the regions become aware of the need for multistate organizations. Therefore, such regional commissions should come into existence only as the states find a need for such organizations.

We also note favorably the use of the interstate compact as a device to permit planning and action on an integrated basis as in the case of the Regional Planning Agency established by California and Nevada to protect the rare beauty and environment at Lake Tahoe. Such compacts will be strengthened if formal coordination also takes place with Federal land management agencies, although we are pleased that information developed as part of the staff research program demonstrates a high degree of such voluntary coordination at the present time at Lake Tahoe.

Alaska

A joint Federal-state natural resources and regional planning commission should in any event be

[38] 68 Stat. 590, codified in scattered sections in Titles 12, 18, 20, 31, 38, 40, and 42 U.S.C. (1964).

[39] n. 35, supra.

established for Alaska. We have concluded that generally the public land laws dealing with the retention and management or disposition of public lands and their resources should apply equally in all states where the public lands are located, including Alaska. In that state, however, the situation is entirely different with regard to planning for the future.[40]

In Chapter Fifteen, we discuss the land grants made by the Alaska Statehood Act [41] to that state. There is a program for the state to select certain public lands until 1984. It is essential that, during the period the selection process continues, there be carefully coordinated planning between the Federal Government and the state, a fact to which we also give recognition in Chapter Twenty dealing with organization, administration, and budgeting.

We note these facts here in order to indicate that the general recommendation for coordination by Federal land management agencies with local and state governments must be strengthened and the State of Alaska given a greater role in planning the future uses of the public land base, since a significant part of that land base will belong to the state in the future.

The State of Alaska needs many facilities, such as roads, port developments, and, ultimately, schools, hospitals, and all the other facilities that service people. It is essential, in furtherance of the objectives of the Statehood Act, to allow the Alaskan people to determine the patterns of geographic growth and development within the state through the process of the state selection program. Approximately 98 percent of the state is now federally owned; but, we must never lose sight of the fact that even after the selection process has been completed, the Federal Government will still own approximately two-thirds of the state.

The emphasis given to the state's desires and needs underscores the Federal responsibility to plan for the retention and management or disposition of the lands that it will have after the selection process is completed, in a manner not to thwart the state's effort to chart its own destiny. Planning of this type requires close coordination with the state in order to assure that no undue burdens are placed on the state for the construction of facilities in areas where the state is not ready to proceed with development. We have a unique opportunity, while state selections are being made, to make joint plans with the state for the proper development of the state consistent with the maximum safeguards for the environment that exists there.

[40] University of Wisconsin, *Federal Land Laws and Policies in Alaska,* Ch. VII. PLLRC Study Report, 1970.

[41] 72 Stat. 339, as amended by 74 Stat. 1024, 78 Stat. 168.

CHAPTER FOUR

Public Land Policy and the Environment

FROM THE START of our review, we have examined, in connection with each topic or subject, the impact of particular public land uses on the environment. This Commission shares today's increasing national concern for the quality of our environment. The survival of human civilization, if not of man himself, may well depend on the measures the nations of the world are willing to take in order to preserve and enhance the quality of the environment.

These problems, which are related to the public lands in varying degrees, stem from many causes, most of them resulting from the growing population and the rapid rate of technological progress. As our national living standards improve and our numbers increase, we have come to demand, among other things, more food, more fiber, more minerals, more energy, more wood products, and more outdoor recreation. The painful experience of crowding, so common now, comes not alone from population density, but from the greater impact on the environment by modern man with his automobiles, his gadgets of all descriptions, and his insatiable demand for more and more of everything. At the same time, our technology has developed artificial products of all kinds which do not disintegrate through natural processes. These solid wastes, the junk of modern life, may bury us if the technology that created them does not find a suitable way to reuse or dispose of them. Persistent insecticides, herbicides, and detergents also constitute threats derived from our rapid industrial development.

We, however, express a cautious optimism, arising from our confidence that America's growing awareness of the danger, and the taking of appropriate steps to protect and enhance our environment, will combine to bring about the necessary corrective processes.

The environmental hazards have had impacts in many ways on our public lands. The vast extent of those lands establishes that they are at the heart of maintaining environmental quality in large areas of the United States.

The variety of characteristics of our public lands requires flexibility in the methods used to achieve quality objectives. Environmental conditions differ greatly among regions, areas, and localities. The problems of environmental management are as complex as the differences in the factors of topography, geology, soil, hydrology, vegetation, wildlife, climate, and visual-spatial form.

As the owner of the public lands, the Federal Government has many laws on the books indicating an interest in the environmental impacts of the use of those lands. Most of these laws provide little statutory guidance and leave the development of standards and procedures to the individual Federal land management agencies. The obvious exceptions are the preservation-oriented statutes relating to such areas as national parks, wilderness areas, and wild and scenic rivers.

Under general constitutional authority there are Federal laws concerning air and water pollution,[1] as well as environmental impacts of highways constructed with Federal financial assistance.[2] These are across-the-board laws, i.e., not limited to Federal lands.

The National Environmental Policy Act of 1969 [3] and the Water Quality Improvement Act of 1970 [4] apply to all Federal agencies in the performance of any of their responsibilities which may have an impact

[1] 42 U.S.C. § 1857 et. seq. and 33 U.S.C. §§ 466 et. seq. (Supp. IV, 1969).
[2] 23 U.S.C. § 131 (Supp. IV, 1969).
[3] P.L. 91–190, 42 U.S.C.A. § 4331 (1970 supp.)
[4] Act of April 3, 1970, 84 stat. 91.

"on man's environment." Thus, they provide a statutory basis to bring environmental quality into planning and decisionmaking wherever gaps exist in previous laws, even though an agency may have to obtain additional legislative authority before taking final action.

As studies prepared for the Commission have revealed, land management agencies have little, if any, statutory guidance, but have developed administratively a plethora of objectives and directives to promote consideration of esthetics, wildlife, and related values. Even so, definitions, criteria, and standards for environmental quality lack operational meaning. Air and water quality standards, where applicable, appear to be the only standards that have been defined specifically enough to be reviewed and monitored. Others often must be identified and defined at the lowest level of management and applied on an *ad hoc* basis.

Our recommendations are based on a comprehensive review of existing Federal laws and administrative practices affecting environmental quality in the management of public lands. The President has required that a review and report from public land agencies on the environmental aspects of their programs be completed and submitted to the Council of Environmental Quality by September 1, 1970. Together with our report, this action should provide a fully adequate basis for early implementation of needed changes.

Within the general framework of the broad policy goals and guidelines of the recent environmental policy acts, we recommend specific environmental goals for the public lands and, in addition to authority necessary to implement them, improved planning directives and mechanisms and stricter control techniques over various land uses.

In this chapter we treat generally with the broader principles underlying our recommendations on environmental matters. More specific implementing recommendations are contained in subsequent chapters that deal with individual subjects and commodities, and that provide a more meaningful context for their understanding.

Environmental Goals

> Recommendation 16: Environmental quality should be recognized by law as an important objective of public land management, and public land policy should be designed to enhance and maintain a high quality environment both on and off the public lands.

In one sense, broad administrative discretion for environmental management recognizes the great variation from place to place in environmental conditions, the variation in regional desires concerning environmental quality, and the realities of management programs. Many of the effects of good, or bad, public land management are quite localized, although some environmental effects occur far from their origin. In another sense, however, the public lands are great national assets that deserve protection from degradation, regardless of the specific local conditions. It is in this latter sense that the need for national goals and standards becomes apparent. We believe that the existing uncertainty as to the long-term effects of land use on the ability of the ecosystem to meet future demands is of national importance.

The National Environmental Policy Act of 1969, cited above, establishes highly desirable national goals for environmental quality. It establishes a national policy to "encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man to enrich the understanding of the ecological systems and natural resources important to the Nation . . ." In addition, it makes it the responsibility of the Federal Government to take certain actions so as to meet a set of six general goals.[5]

But this Act does not provide goals that are sufficiently specific as guides for action on public lands. The Federal Government, after all, does have direct control over the public lands and their use. The people of the country should be given a clear idea of the kind of environment to be maintained on these lands, and the Federal actions proposed to assure that environment.

The Federal policy structure for maintaining and enhancing environmental quality on the public lands is uneven and contains broad gaps. We have found that the clearest expressions of policy concern the national parks and wilderness areas, which are set aside to protect an existing environment. For other kinds of lands, where various uses of the land and its resources are permitted, we have generally found a lack of clear policy direction.[6]

We have also noted that much of the concern expressed in the existing environmental policies for public lands deals with scenery and the protection of certain kinds of ecosystems. The recent laws provid-

[5] In addition we note that the Federal Water Pollution Control Act declares its purpose to be "to enhance the quality and value of our water resources and to establish a national policy for the prevention, control, and abatement of water pollution." 33 U.S.C. § 466 (a) (Supp. IV, 1969). The Air Quality Act of 1967 states as its objectives, among others, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 1857(b(1)) (Supp. IV, 1969).

[6] Ira M. Heyman and Robert H. Twiss, *Legal and Administrative Framework for Environmental Management of the Public Lands, chs. III and IV*. PLLRC Study Report, 1970.

Improper logging practices destroy stream values and spoil the esthetic environment of a forest. Slash burning is a contributor to air pollution.

ing for water and air quality programs, and the concern over the use of pesticides and herbicides, have not been expressed in statutory public land policy and generally have not been translated into specific administrative guides.

The multiple use acts, which provide the broadest expressions of policy for the lands managed by both the Forest Service [7] and the Bureau of Land Management,[8] require that these lands be managed and uses be permitted "without impairment of the productivity of the land." The act applying to BLM also requires that "consideration be given to all pertinent factors, including, but not limited to, ecology, . . ." We believe these are necessary and important expressions of concern for some aspects of environmental quality. But we also believe that public land laws should require the consideration of all such aspects and that environmental quality on public lands be enhanced or maintained to the maximum feasible extent.

We believe that such physical and biological effects as air and water pollution, esthetic and scenic effects, and all impacts on the ecosystem, whether immediate or secondary, short-term or long-term, including those resulting from the use of pesticides, herbicides, dispersants, and other chemicals, must all be considered as significant environmental effects. We are concerned that the current aroused interest in environmental matters not be dissipated by "fads" for one or another aspect of the environment. All of them are important, and all should be considered in public land decisions. Nor should any lessening of public popularity for the issue be permitted to relegate such consideration to minor significance.

To assure that environmental quality be given the attention it deserves on the public lands, *we propose that the enhancement and maintenance of the environment, with rehabilitation where necessary, be defined as objectives for all classes of public lands.* This proposal goes beyond the existing statutes by giving environmental quality a status equivalent to those uses of the public lands which now have explicit recognition, and by indicating that through design and management, environmental quality can be improved as well as preserved.

Environmental Standards

Recommendation 17: Federal standards for environmental quality should be established for public lands to the extent possible, except that, where state standards have been adopted under Federal law, state standards should be utilized.

A pattern of Federal-state cooperation has emerged in some of the recent legislation dealing with environmental quality. Under the air and water pollution control laws, matching funds are provided for programs that can be initiated once a state plan is approved by the Federal Government. In this way, the local interest in air and water pollution effects is recognized, while the Federal interest in these programs is also recognized by requiring that standards suggested by the states be subject to Federal approval. With respect to other environmental quality standards, we believe the states should have a reasonable time in which to develop statewide measures.

We also believe that programs on public lands should be subject to federally approved state standards as long as these standards reflect reasonable objectives for regional and local areas. It would be highly inappropriate for the Federal Government to adopt, for example, standards not consistent with state standards approved by the Federal Government for waters flowing across public lands. The lack of Federal programs encouraging the establishment of state standards for environmental quality, and the failure of the state to act on its own, should not stand in the way of the establishment of Federal standards for the public lands wherever possible. *We recommend the enactment of Federal legislation for that purpose. In the interim, where states have adopted standards, we recommend that Federal administrators require adherence to those standards.*[9]

It will be quite difficult to establish standards for some aspects of environmental quality, such as scenic beauty, which is valued in subjective terms and is not susceptible to measurement. But it is important to make an effort to establish at least relative goals and standards, to the extent possible, for all aspects of environmental quality on public lands. The Federal Government should not allow itself to be placed in a position where it can be said that it is asking others to do what it is not willing to do itself.

Federal land and resources should be retained and managed or disposed of so as to support Federal, state, and local programs for the maintenance and enhancement of environmental quality. Actions on retained lands should generally be coordinated with other levels of government so that public land programs do not conflict with those of other governmental levels. Similarly, *when public lands and resources are sold or otherwise transferred into non-Federal ownership, the Federal Government has an opportunity to aid its efforts and those of state and local governments to improve environmental quality. Such transfer can be conditioned on the recipient complying with established standards for pollution*

[7] 16 U.S.C. §§ 528–531 (1964).
[8] 43 U.S.C. §§ 1411–1418 (1964).

[9] An example is the enactment of state laws governing strip mine reclamation.

Mining operations on the public lands, as all other activities, should cause the minimum disruption possible to environmental values. Statutes should provide for reclamation provisions.

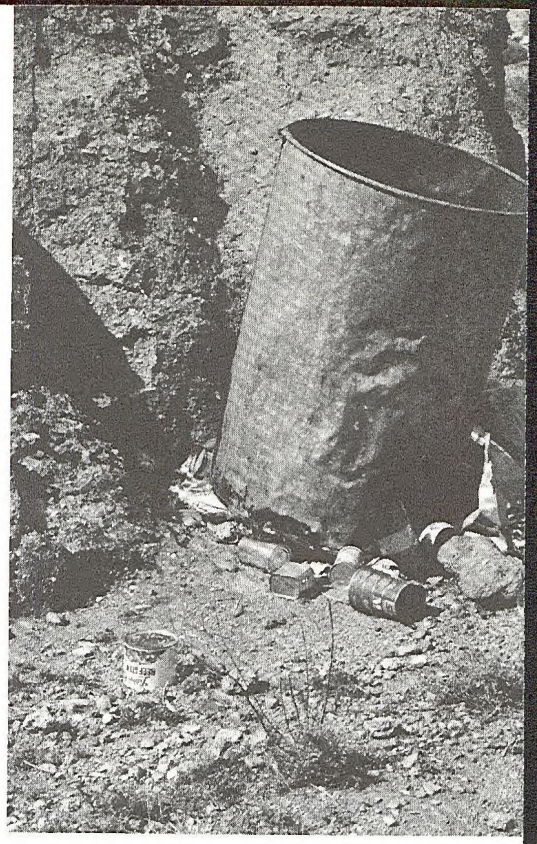
Though an accepted forestry practice for the regeneration of forests, patch cutting presents an eyesore to the passing motorist.

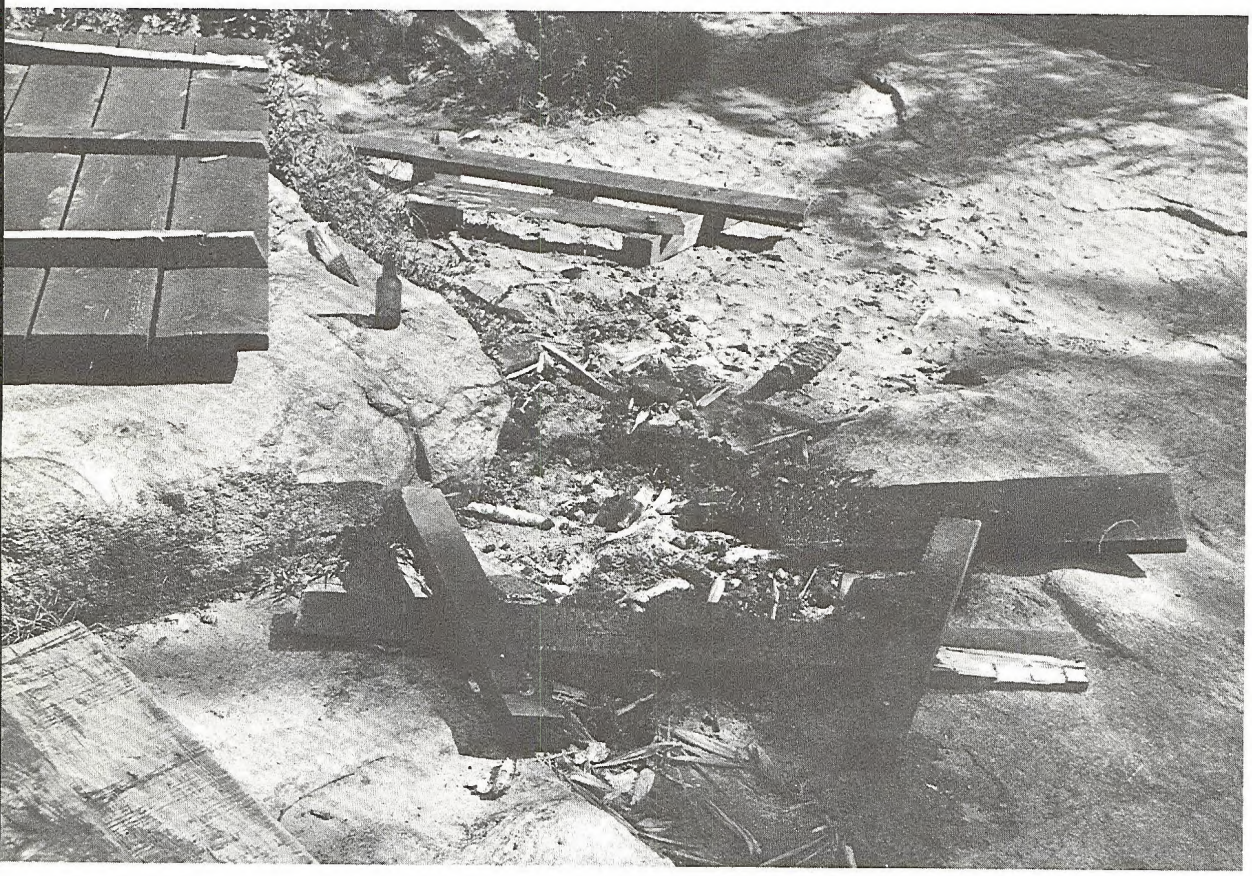
control or other aspects of environmental quality, both on and off the public lands.

Planning Guidelines and Mechanisms

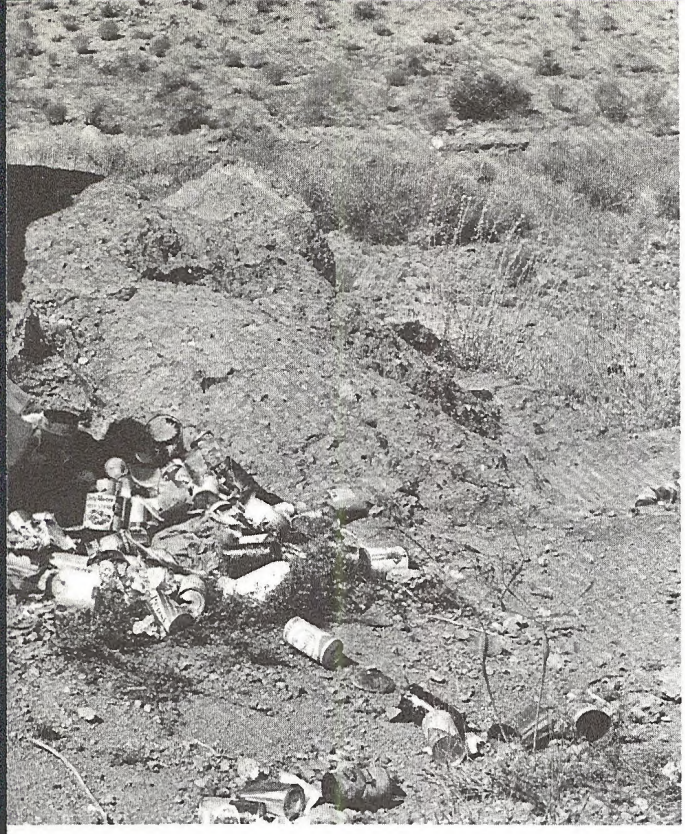
The recommendations we make in the preceding chapter concerning land use planning by the public land management agencies are broadly applicable to the environmental considerations which must be incorporated as an important aspect of the planning process. Thus, implementation of our proposals requiring: (1) The development of meaningful land use plans; (2) specification of the factors to be considered in developing such plans and how they are taken into account; (3) better coordination among the Federal agencies and broader intergovernmental coordination; (4) the development of regional planning mechanisms; and (5) greater public participation, will promote better consideration of environmental factors in public land use planning.

Several points require particular emphasis, however, since it is evident that the public land agencies have not responded in all cases to the needs of





Litter and vandalism on the public lands cause expensive maintenance problems and call for more progressive management and enforcement efforts (top and above). The entrance to a small-tract development, carved from the public lands, warns the visitor of worse things to come (right).



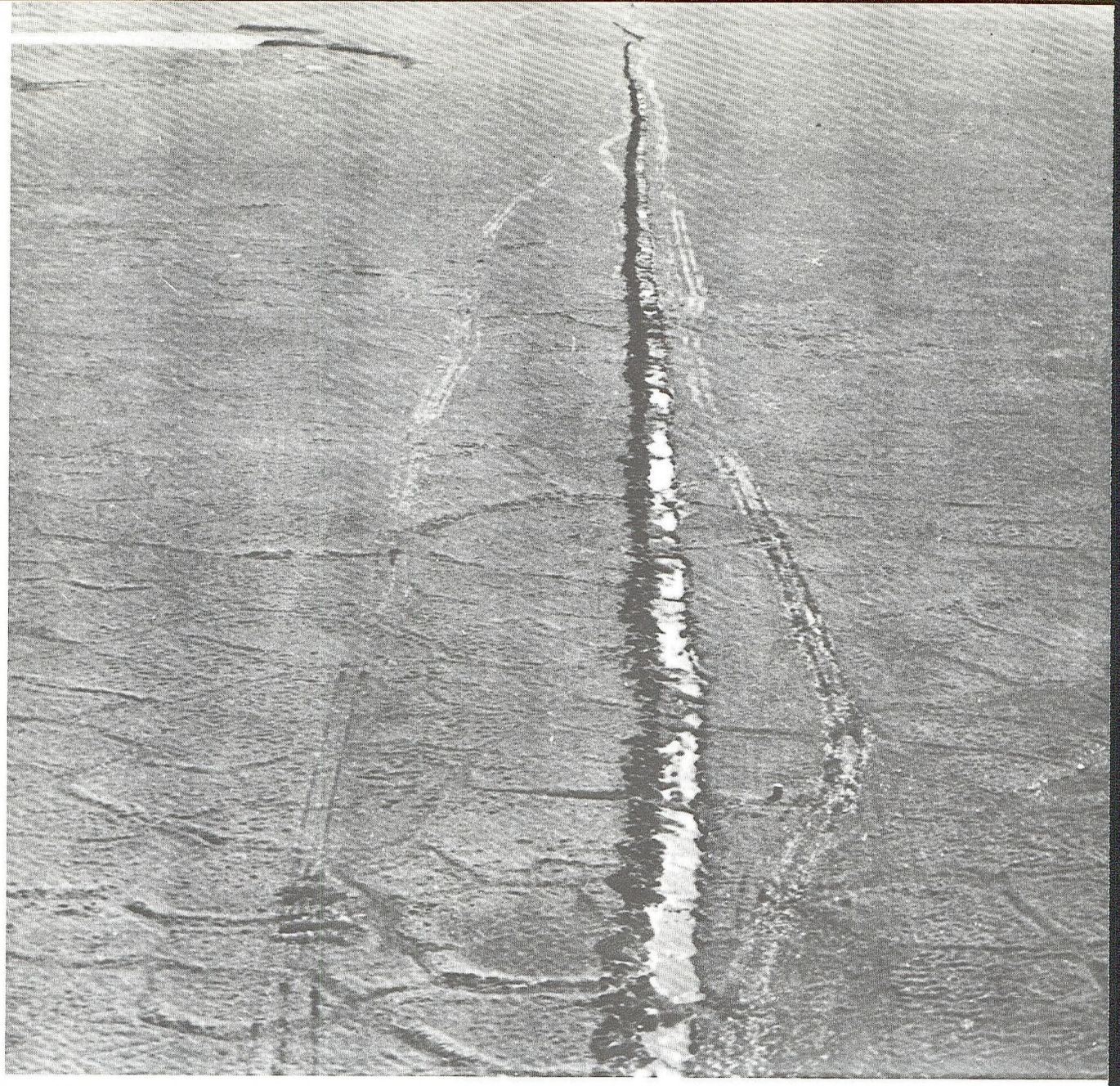
environmental quality in their planning procedures. We believe this is due in part to a lack of statutory guidance, and in part to a failure by the agencies to classify their lands in advance for environmental quality management.

Classification for Environmental Quality

> Recommendation 18: Congress should require classification of the public lands for environmental quality enhancement and maintenance.

In our recommendations on land use planning, we would require environmental factors as an element to be fully considered in land use plans. In this portion of the report, we detail the manner in which attention should be given to these factors.

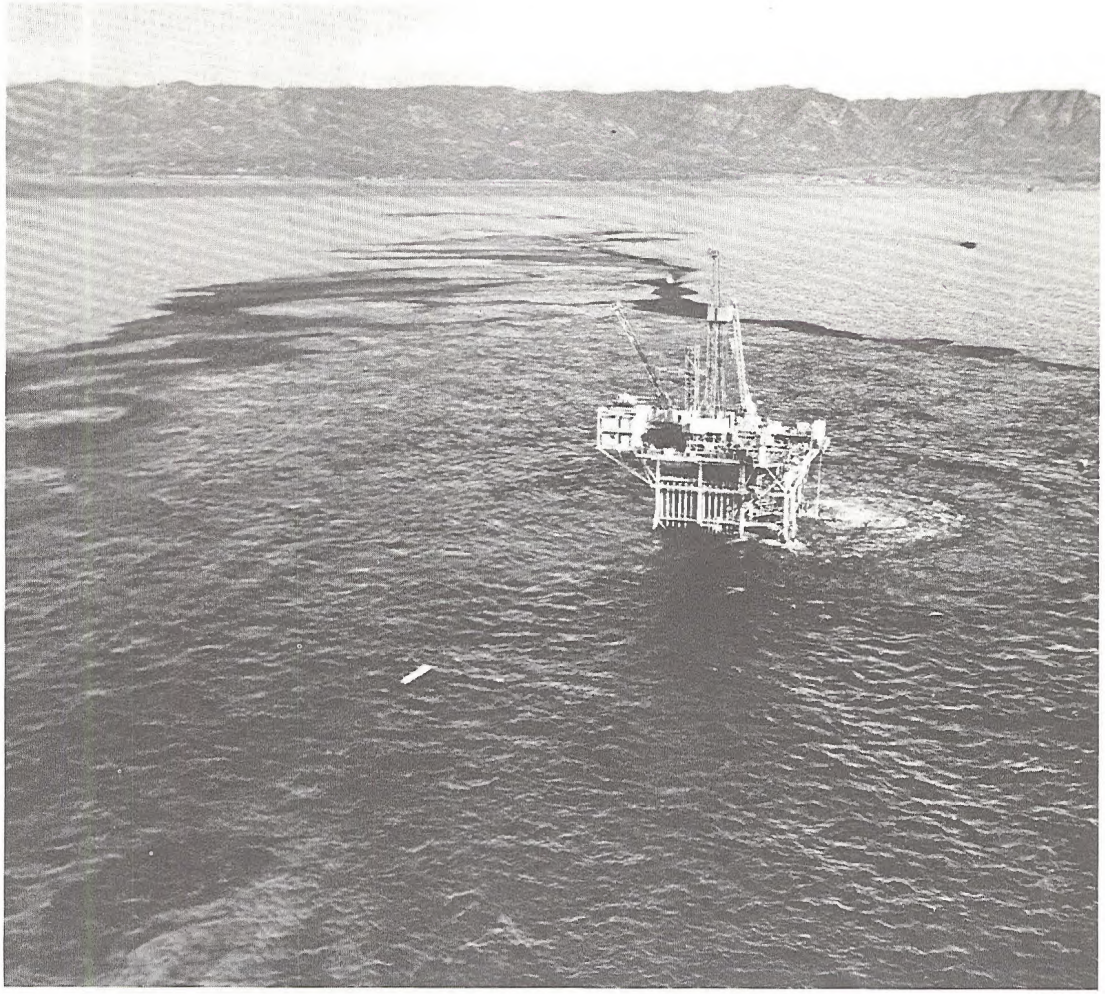
Environmental conditions differ greatly, not only between regions, but often because of minor differences in elevation or location. Each environmental factor—topography, geology, soil, hydrology, vegeta-



tion, wildlife, climate, and visual and spatial form—has various responses to, or capacity for, a particular use or development. Thus, the ability to predict or control the impact of a particular use on the environment will require detailed information on the composition of the environment with respect to those factors. The development of knowledge about the tolerance of particular environments to various uses at an early stage is essential, both to meaningful planning for land uses in a particular area and to the development of appropriate operating rules and controls for permitted uses. Although such an approach is being followed by some of the agencies in a rudimentary fashion, studies prepared for us show that much useful knowledge about the basic environment and the effects of various uses is lacking.

Classification of the public lands to provide for different degrees of environmental quality would provide guidance for controlling the location of activities, so as to minimize their impacts. This approach—a systematic classification and inventory of important environmental considerations on each area of public lands as part of the agencies' land use decisionmaking—will give assurance that environmental effects will be taken into account in public land decisions.

We propose that the system of environmental quality classification be based on desirable levels of quality to be maintained in each area for the major components of the environment, such as water, air, esthetics or scenery, and composition of the ecosystem. This should be done in close cooperation with the states, and where the states or local governments have developed satisfactory classifications, as, for



Disruption of the permafrost in Alaska causes serious erosion problems. This is a tractor trail near Canning River, Alaska (left). Above is a view of the Santa Barbara oil spill.

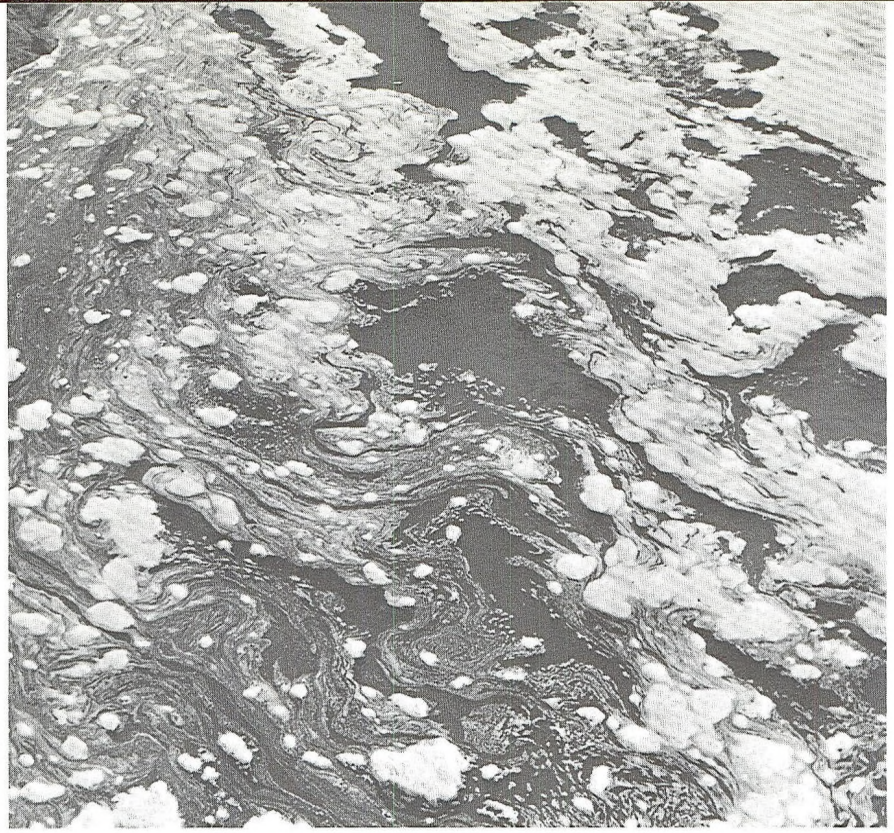
example, in connection with water quality standards, these would be incorporated in the public land classifications.

The management zones identified in multiple-use planning by the Forest Service evidence a sensitivity to environmental factors, particularly those related to scenery and vegetative cover.[10] However, this does not go far enough.

We recommend that a standard system of environmental quality classification should be developed and, after congressional approval, employed by the Federal land administering agencies in classifying the public lands for environmental management. As indicated above, there is an urgent need for workable guidelines for administering the public lands for environmental quality control. We recognize that no single standard can be promulgated and applied to the diverse conditions found throughout the public land regions. Yet, we believe the many unclear standards and guides to environmental management in the various manuals and regulations of the administering agencies are incomplete as to their coverage of major components of the environment and so general and vague as to be of little value in program operations.

We believe it is possible to devise and apply a framework of standards for use in environmental management of public lands that is clear and practical, and also flexible enough to be applied in diverse circumstances and localities. A possible approach is to establish a hierarchy of classes for categorizing each major component of the environment.

[10] n. 6, supra.



Land and water quality control should be among the primary goals of public land management.

In this approach the entire environment can be viewed as having four major components or elements: water, air, quality experience and the biosystem. Water and air, as fundamental elements of the natural environment need no definition. We suggest a separate category of "quality of experience" that embraces all those intangible visual and aural attributes of our surroundings. This category includes the often overlooked need to reduce noise pollution. Included also is the qualitative effect on the psyche of litter, refuse, overcrowding, and the form and location of constructed works, such as roads, dams, buildings, and powerlines.

The fourth category of biosystem is concerned primarily with the living elements of the environment, the vegetation and animal life including their different associations and interrelationships in various locales.

It is possible to specify two or more levels of quality for which each of these major components of the environment can and should be maintained or managed. Each quality level could be defined in terms of a purpose or an end to be served by maintaining the particular quality level.

To insure continuing quality levels so defined, the desired condition for the four basic categories, i.e., water, biosystem, quality of experience and air must be specified and maintained. The technical conditions suggested as possible guidelines to maintain each quality level might provide the basis for completing the description of each zoning or subcategory. The constraints to be imposed on each type of land use that occurs or is contemplated in each zone would be specified.

In sum, the zoning analogy is to be applied. Each major component of the environment would offer variable levels of quality to be maintained for each important environmental element. This in turn would lead to the specification of a set of different degrees of land use constraint for all types of land and resource use for each category.

An example of how environmental quality zoning classes could be used in public land administration is set forth in the accompanying table and illustration.[11] Any viable system must remain flexible and subject to change and refinement lest it become, like some city zoning measures, a procrustean bed.

The utility of this approach lies in the classification of public lands for environmental management using a verifiable method for determining what uses can be advocated, or what constraints must be placed on uses, in order to achieve a desired level of environmental quality. The desired level of environmental quality and the specific use constraints that are necessary for each area of public lands will be determined by topography, soils, vegetative cover, climate, and the whole calculus of variables peculiar to different public land locations. The area managed need not be designated by size but may be zoned to assure a given level of quality maintenance within each major component of the environment.[12]

Land Use Planning Includes Environmental Factors

Recommendation 19: Congress should specify the kinds of environmental factors to be considered in land use planning and decision-making, and require the agencies to indicate clearly how they were taken into account.

The National Environmental Policy Act[13] does not define the term "environment," nor is it defined in any other Federal statute, although there are many of them that are addressed to environmental matters. We think that clarification of the term would be desirable as a general principle, and would be particularly appropriate in setting forth the environmental factors to be considered in Federal land use planning. Thus, in such planning, the public land agencies should consider the impact of possible uses of land on the land itself, as well as on air, water, climate, vegetation, wildlife, and man, the latter from the viewpoint of his health and safety, his economic well-being, and his esthetic sense.

The National Environmental Policy Act requires a "detailed statement" on the environmental impact of, and possible alternatives to, proposed actions "in every report on proposals for legislation and other *major* Federal actions significantly affecting the quality of the human environment." (Emphasis supplied.) We endorse that principle. However, we would also apply it to *all* public land use plans and decisions, not only to those deemed by the land manager to be "major." There should be a record available with all such plans and decisions, from which can be determined the extent to which environmental factors were considered. This should be accepted as a normal process in land management.

(*Text continued on page 80.*)

[11] The table shows an example of one possible approach to a classification system for environmental management of public lands. The illustration portrays graphically how the classification system might appear if applied to an area of public lands. The Commission is not recommending that this table be adopted without consideration being given to possible alternative approaches.

[12] Two studies conducted under contract for the Commission described alternative approaches to systematic classification of environmental quality and related factors. Landscapes, Inc., *Environmental Quality and the Public Lands.* PLLRC Study Report, 1970. Steinitz Rogers Associates, Inc., A General System for Environmental Resource Analysis. PLLRC Study Report, 1970.

[13] n. 3, supra.

EXAMPLE

POSSIBLE CLASSIFICATION SYSTEM FOR ENVIRONMENTAL MANAGEMENT

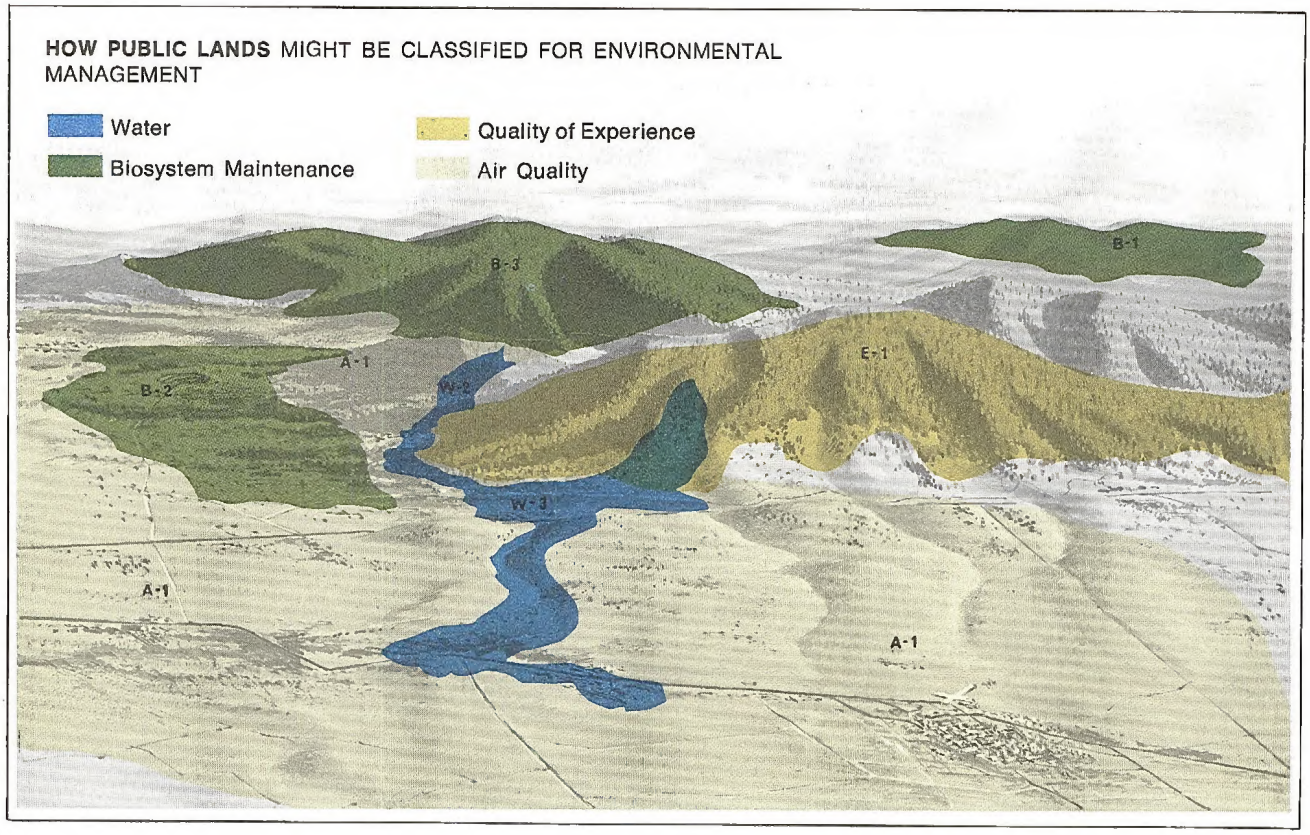
Environmental Category	Quality Related to Purpose	Environmental Attributes to be Monitored and Managed	Management Actions
		WATER	
W–1	Fishery, and other components of the biotic system.	High level of dissolved oxygen. Exacting tolerances for temperature, trace minerals, pH, toxic chemicals, nutrients, . . . Low silt and organic matter.	Prohibit land grading, landfills, vegetative clearing, burning, mining, except where environmental review and impact studies prove that stringent measures can keep changes to environmental attributes within tolerances.
W–2	Domestic water supply, swimming, industrial uses requiring high quality water.	High to moderate levels of dissolved oxygen. Moderate temperature fluctuation. Limits on trace minerals, pH, toxic chemicals and nutrients over a range of tolerances related to resource uses.	Permit moderate disturbances (prohibited above), but only upon determination of each developments' disturbance factors and contribution to the stream or lake's budget for sediment, etc.
W–3	Irrigated agriculture, industrial cooling water.	Control of dissolved salts and toxic materials.	Strict controls on activities that disturb soils and lead to leaching of salts or flow of acidic or otherwise toxic materials from public lands.
		BIOSYSTEM MAINTENANCE	
B–1	Perpetuation of full natural biosystem—for recreation, education, scientific study.	Minimum of man-induced changes in species composition, biomass, food chains, habitat conditions, predator-prey relationships, and population dynamics.	Perpetuate natural ecosystem processes or manage to compensate. Logging, mining, and construction, etc. normally excluded.
B–2	Limited modification of biosystem to produce specific goods or services (native range management, selective cutting in mixed hardwoods).	Minor changes in plant and animal species composition. Minor changes in habitat for preferred species. Some alteration of wildlife populations.	Alter natural system only when environmental review and impact studies allow full prediction and control over specific changes. Mitigative and corrective measures to be specified in resource management plans for timber, recreation, etc.
B–3	Major modification to maximize output of a particular product or use (single species management for commercial timber production; primary management for elk).	Large scale vegetative type conversions. Major change of habitat for preferred species.	Intensive uses or developments normally permitted if environmental review and impact studies indicate biosystem losses are offset by value of goods and services.

QUALITY OF EXPERIENCE

E–1	Visual and esthetic environments as related to recreational, residential, and travel purposes.	High capacity for direct and detailed sensory involvement. Natural dominance of form, scale, and proportion. High constraint, vividness, image creation, and unity.	Avoid disturbance of natural pattern. Prohibit intrusions of logging, mining, intensive recreation, roads, power lines, etc., except insofar as environmental design studies indicate that intentional display of resource management is consistent with scenic management objectives.
E–2	Cultural, historical, and informational values for recreational and educational purposes.	Unique, archetypal, rare, or transitory artifacts or locations relative to the environmental context.	Preservation or restoration. Prohibit competing land uses. Protect from overuse by recreationists and collectors.
E–3	Personal and social experiences free from crowding, development, and noise.	High capacity for isolation and interaction with national environment. Minimum intrusion of man-made structures and facilities and man-induced changes. Low artificial noise levels (vehicles, aircraft, radios).	Limit number of recreation visitors through rationing of physical design. Prohibit or minimize noise producing intrusions. Prohibit development of structures except where design studies show minimum disturbance.
E–4	Natural biological and physical features.	Unique or dramatic landforms or features (not necessarily of biological importance). High capacity for orientation (as with landmarks). Rare or especially archetypal geologic formations.	Modify resource management practices to enhance such features. Prohibit or restrict extractive or product-oriented uses except as they may be shown to complement feature-oriented uses.

AIR QUALITY

A–1	Human health protection (respiration; sight; skin).	Hold levels and combinations of oxides of sulfur and carbon, hydrocarbons, photochemical oxidents, and particle (solid) matter to tolerances required to support each purpose of air quality maintenance on both a 24 hour and annual basis. Maintain natural background levels of particle matter in ambient air in rural areas to the extent possible. Specific conditions to be maintained depend on different meteorological conditions, climate (wet, dry) topography, and latitude-longitude.	Control use of internal combustion engines on public land areas to hold hydrocarbon and particle matter below necessary levels. Control dust generated by mining and logging, and by recreational vehicles and logging and ore trucks traveling on unpaved land. Control stack emissions from on and offsite pulp and paper mills, concentrate mills, organic fueled power generating plants, and other industrial plants to hold particle matter and gaseous pollutants to necessary levels. Burning of logging waste and controlled burning of forest and rangelands for management purposes to be regulated daily and seasonally to meet necessary air quality requirements.
A–2	Natural biosystem protection (carbon dioxide-oxygen exchange balance; foliage burn).		
A–3	Materials protection (corrosion; etching; stain).		
A–4	Esthetics protection (haze; odors).		



Studies of Environmental Impacts

> Recommendation 20: Congress should provide for greater use of studies of environmental impacts as a precondition to certain kinds of uses.

Beyond the consideration given to the environment in general land use planning, as well as the likely effect of certain kinds of uses, some uses, entailing severe, often irreversible, impacts, should be permitted only if a decision is based on a detailed study of their potential impact on the environment. The kinds of uses that should require impact studies because of the severity of their effect, include transmission lines, roads, dams, open-pit mining operations, timber harvesting, extensive chemical control programs, mineral operations on the Outer Continental Shelf, and high density recreational developments. The need for and depth of such studies would vary directly with the nature of the proposed use and the sensitivity of the environment upon which it would operate.

The agencies are now doing this administratively, particularly with respect to use of national forest lands for transmission lines, dams, and roads. However, the principal problem in many cases appears to be one of timing, in that the public land agencies are brought into the picture at so late a date that when impact studies are made, they are often done concurrently with the implementation of the project.[14] Unless the agencies are brought in at an early stage, these studies can at best serve a limited function, i.e., mitigation of adverse impacts. They cannot be used, as may be appropriate in some cases, to provide the basis for a decision to select alternative sites, routes, etc., or even not to proceed with the project at all.

Expanded Research

> Recommendation 21: Existing research programs related to the public lands should be expanded for greater emphasis on environmental quality.

Such an expanded research effort is required in order to provide the information and expertise necessary to give proper attention to the environmental aspects of public land management.

This would not necessitate a new program, but simply an extension of existing programs under several statutes,[15] which form the basis of Forest Service and independent grant research programs. The Commission's recommendation to merge the Forest Service with the Department of the Interior, made elsewhere in this report, would make the Forest

[14] n. 6, supra.

[15] See 16 U.S.C. § 581–581j and 16 U.S.C. §§ 582a–582a–7 (1964) as to the Forest Service and 42 U.S.C. §§ 1961b (Supp. IV, 1969) as to water resources.

Service research program more responsive to research needs on national parks, refuges, and Bureau of Land Management lands. Greater emphasis on environmental quality research should include efforts to provide better measurements, to the extent possible, of esthetic factors and other nonquantifiable amenities.

Mandatory Public Hearings

> Recommendation 22: Public hearings with respect to environmental considerations should be mandatory on proposed public land projcts or decisions when requested by the states or by the Council on Environmental Quality.

An Executive order [16] implementing the National Environmental Policy Act directs all Federal agencies to "develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties," including *"whenever appropriate,* provision for public hearings" (emphasis added). We believe that this does not go far enough.

In our general land use planning recommendations, we suggest, among other things, mandatory public hearings at an appropriate stage in the planning process. This will permit public participation in developing information on all relevant subjects, including environmental factors.

While we have generally favored leaving the use of public hearings to agency discretion in specific land actions, *in situations where significant environmental considerations are involved, we recommend mandatory public hearings.* As the best indication of the "significance" of particular environmental situations, we think a request by either a state or the Council on Environmental Quality [17] is of appropriate dignity to require a hearing. Individuals or groups that may have particular concerns would not be precluded from urging the agencies to hold a discretionary hearing, but when a state or the Council on Environmental Quality are convinced of the importance of their cause, a hearing would then become mandatory.

Adequacy of Existing Control Authority

With certain exceptions, our review of the statutory authority of the land administering agencies shows that it is satisfactory—even though no adequate guidelines exist—to permit the agencies to employ a wide range of control techniques to prevent or minimize the adverse environmental impacts of various lands.

Under the contractual and licensing authority which governs most uses of the public lands, there is ample authority to include protective provisions in such control instruments as timber sale contracts, mineral leases, grazing permits, and recreational and other special use permits. The major exceptions to this general situation under the existing system, which would be rectified under recommendations we make in this report, concern recreation activities by the general public on multiple use areas, mining activity under the Mining Law of 1872,[18] and certain occupancy uses, particularly road construction and utilization. The failure of the agencies, particularly the Bureau of Land Management and the Forest Service, to make greater use of such authority as they have, emphasizes the need for explicit statutory guidelines. Such guidelines for protection of the public lands are recommended elsewhere in this report.

Control of Offsite Impacts

> Recommendation 23: Congress should authorize and require the public land agencies to condition the granting of rights or privileges to the public lands or their resources on compliance with applicable environmental control measures governing operations off public lands which are closely related to the right or privilege granted.

Because there is often a direct connection between public land resource rights and privileges granted to various industrial users and later environmental impacts caused by the utilization of the resource off the public lands,[19] the agencies should be authorized and directed to control the adverse environmental impacts of activities off the public lands as well as on them caused by those using public land resources.

For example, public land timber may supply a woodpulp mill causing air and water pollution and the degradation of landscape esthetics. Smelters processing public land minerals may cause similar adverse environmental impacts.

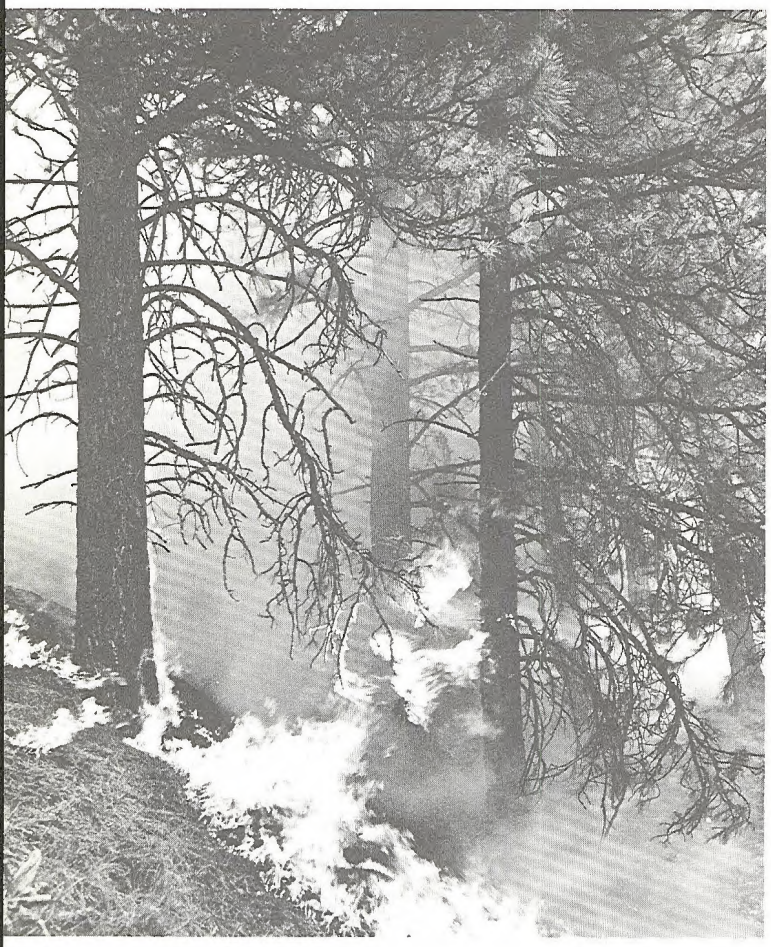
This recommendation is premised on the conviction that the granting of public land rights and privileges can and should be used, under clear congressional guidelines, as leverage to accomplish broader environmental goals off the public lands.

However, we recognize that considerable restraint

[16] Executive Order No. 11514, March 7, 1970, 35 Fed. Reg. 4247.

[17] Created by National Environmental Quality Act of 1969, n. 3, supra.

[19] See, for example, case study 5, Rocky Mountain Center on Environment, *Environmental Problems on the Public Land.* PLLRC Study Report, 1970.



Fires in the forest, whether wild or employed as a silvicultural tool, are another source of air pollution.

must be used in implementing this recommendation. *We recommend that the activities against which such indirect leverages should be employed ought generally to be limited to those that bear a close relationship to the use of the public lands and that would have an adverse effect on the environment off the public lands.*

Where Federal, state, or local environmental quality standards have been established, firms that are violating these standards would be identified by the applicable level of government. Such firms should not be eligible for obtaining public land resources for use in the plant where violations occur. Federal privileges granted should be conditioned on continued compliance, and should be subject to termination for violation, in addition to other applicable penalties under Federal, state, or local law.

We believe that this policy would not be unduly intrusive as long as it is restricted to the stages of processing that involve the use of resources in essentially the same form as they leave the public lands, and to violations of clearly established environmental standards by the particular plant processing the resources. In other words, we do not propose that a Federal public land lease be denied a company in Utah or Alaska because that company's unrelated activity in a manufacturing plant is accused of polluting the Hudson River in New York.

In the preceding discussion, it is demonstrated how the recommendation we make permits the United States to use its licensing power to protect adverse environmental impacts off the public lands. Similarly, the Federal Government should at all times manage its public lands so that its own actions will not degrade the surrounding environment. *To support this conclusion, we recommend that the land management agencies should be required by statute to control fire, insect, and disease outbreaks on public lands, including wilderness areas, to assure that there is no adverse impact on any adjacent area.*

Covenants and Easements

Recommendation 24: Federal land administering agencies should be authorized to protect the public land environment by (1) imposing protective covenants in disposals of public lands, and (2) acquiring easements on non-Federal lands adjacent to public lands.

Activities carried out on non-Federal lands in proximity to public lands can and do adversely affect the environment of the public lands. In addition to degrading the scenic values of the public lands, adjacent or nearby land uses can cause air and water pollution with attendant impacts upon the natural biosystems and the health of public land users.

We have confidence that, because of their mutual concern, such activities in the vicinity of the public lands will be appropriately regulated by state and local authorities in close cooperation with the Federal agencies. But we must not risk failure, and, *therefore, recommend that if cooperation is not prompt and successful, the agencies should be empowered to take direct action in furtherance of the preservation of the public land environment.*

Although some of our contract studies suggest that direct Federal regulation or zoning, in the limited situations with which we are concerned, would be appropriate and constitutionally permissible, we do not favor such an approach. Rather, *we recommend*

[18] A major deficiency is contained in 43 U.S.C. § 932, an 1866 act granting rights of way for the construction of highways over the unreserved public lands which may be initiated and constructed without federal approval. This precludes meaningful federal control over the location and design of such highways to protect environmental values.

action through the use of traditional public land acquisition and disposal techniques: The agencies should be authorized and directed to (1) include in patents and leases of public lands covenants to preserve environmental values on adjacent or nearby federally owned lands; and (2) acquire easements over lands in non-Federal ownership when necessary to protect environmental values on the public lands they manage.

Improved Control Techniques

We have found in our review that, although there are provisions in regulations and other administrative directives to prevent or minimize environmental abuses of the public lands, there are important gaps in authority and practice.[20]

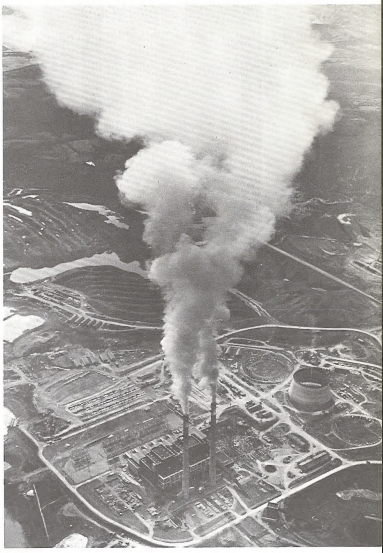
The public land agencies must be in a position, and have controls available, to respond to adverse environmental impacts as their nature becomes known. For example, the use of pesticides and herbicides grew rapidly after World War II, but knowledge of the possible adverse consequences of such chemicals lagged until recently.

Not only must the Federal agencies have statutory authority for controlling uses of the public lands in the interests of environmental quality, but they must have programs for monitoring activities on the public lands. Recent examples of failure to maintain proper and authorized controls over oil drilling on the Outer Continental Shelf have, for example, resulted in major adverse environmental impacts. To some extent, these resulted from a lack of personnel and an occasional laxity on the part of the public land agencies as well as avoidance of controls by users.

In this context we note, as we do in Chapter Eleven, that public notice should not only be given of "operational orders," but waivers of such orders or regulations should also be publicized. Sometimes the waiver of an order is more significant than the regulation, and the public should be informed.

We believe it is important that public land agencies develop regular procedures for monitoring all activities and adherence to regulations where ignorance, negligence, or violation could result in adverse environmental impacts. We recognize that there is a need for an environmental monitoring system to observe generally and evaluate modifications in the environment. However, where environmental effects are generally widespread, as with air and water quality, we do not believe there should be an extensive monitoring system established just for the public lands. *We do recommend that when and if a nationwide monitoring system is established, the public land management agencies should participate in it and make certain that the specific requirements for knowledge concerning the public lands are met.*

[20] See, e.g., n. 19 supra; case studies 4, 9, 11, and 16.



Industrial pollution should be controlled by public land laws if the industry's raw material originates on public lands.

Responsibilities of Users

Recommendation 25: Those who use the public lands and resources should, in each instance, be required by statute to conduct their activities in a manner that avoids or minimizes adverse environmental impacts, and should be responsible for restoring areas to an acceptable standard where their use has an adverse impact on the environment.

Natural areas should be given recognition as a proper use of the public lands in the statutes immediately, so they can be protected from other uses.

Many uses of the public lands are not controlled by permit or contract. And even if the recommendations of this Commission are adopted to require permits for additional uses, some, such as permits for general recreation use or for hunting and fishing, will not create a relationship between the United States and the user that will permit the establishment of specific control measures to protect the environment.

Where public lands and resources are used or obtained under a contract or permit issued for a specific purpose, the situation is quite different.

In such cases, the Federal Government is able to, and to some extent does, establish environment conditions that must be maintained in connection with the use. Forest Service and Bureau of Land Management timber sale contracts require that the contractor build roads in a specified manner, remove obstacles to the normal flow of water, remove slash from some areas, and so on. These and similar requirements imposed on operators holding mineral leases place the burden and cost of meeting the requirements directly on the operators. They must take the estimated costs of all contractual obligations into consideration when obtaining the contract.

A major difficulty is that the requirements are uneven and will remain so in the absence of a statutory foundation. Where the casual user has caused damage, or where there has been a failure to have a proper requirement in a lease, the Federal Government must bear the cost of restoration, rehabilitation, or the minimum cleanup of the area. *We recommend that there be a statutory requirement that all users be made responsible for maintaining or restoring en-*

vironmental quality to an acceptable level at their own expense.

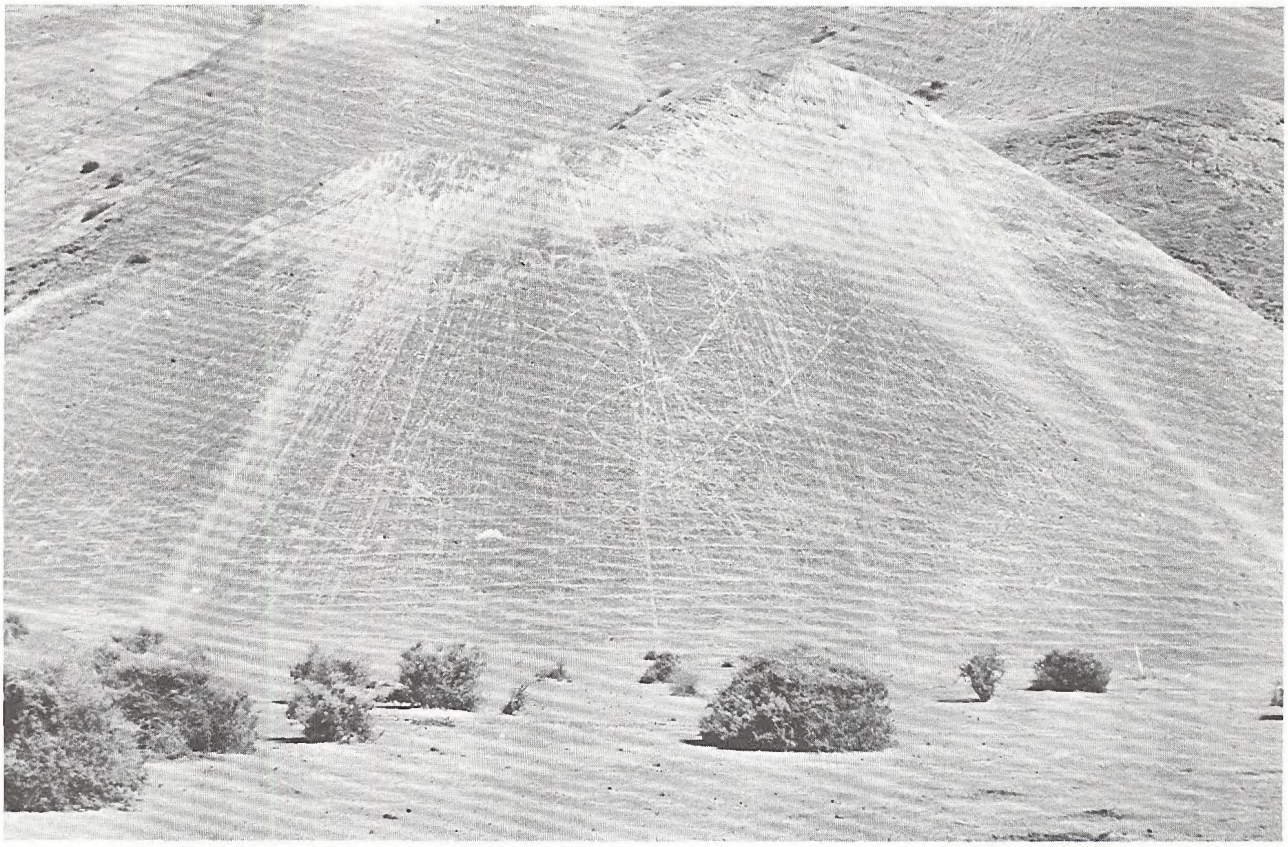
Flexibility must be given to the administrators to include specific reasonable conditions in permits and contracts. In other chapters of this report we recommend means of implementing this recommendation with respect to uses that are known to have potential impact on the environment. Furthermore, we emphasize that the measures required of the user, and the type of rehabilitation required, be made known before the user enters into a contract with the government, and that they then be made part of the agreement so that the user has a clear understanding of what is expected of him before he initiates his use of the public lands.

The cost of maintaining a quality environment thereby becomes an element in determining the economic feasibility of an enterprise. In some instances, where the production of a commodity or the furnishing of a service is desirable to meet a national need, it may not be possible for private enterprise to undertake the activity if the full cost of avoiding adverse impact or of subsequent rehabilitation is charged to the user. *We, therefore, recommend that on a pilot basis, Federal departments and agencies be authorized to share in those costs after a formal finding that there is an urgent requirement for the proposed use, and that the level of rehabilitation should be higher than could reasonably be expected from private enterprise alone as in the case of oil shale development* (see Chapter Seven).

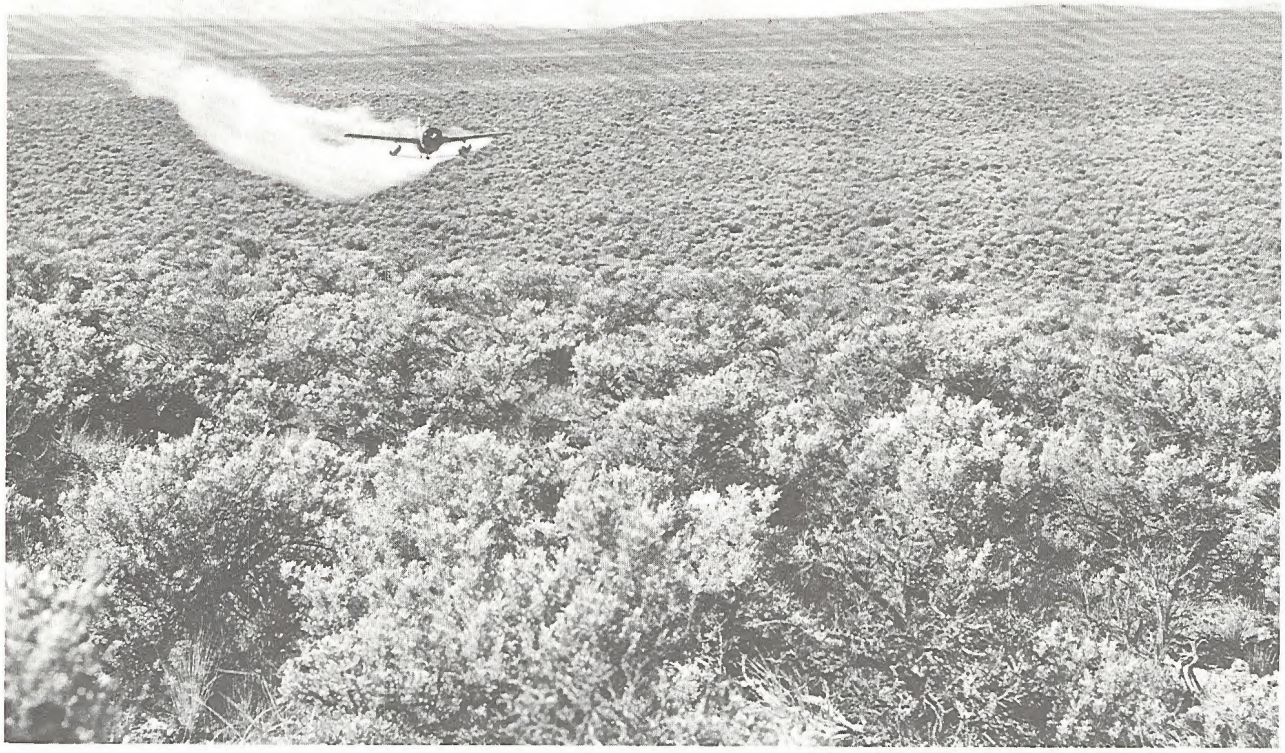
In the situations not controlled by contractual relationships, we recognize that there will be greater difficulty of enforcement. Nonetheless, we believe statutory liability of the user must be established and some efforts be made to shift from the Federal Government at least some of the cost of restoring damage caused by noneconomic users. Excluding the cost of cleaning up litter and garbage, the Intermountain Region [21] of the National Forest Service alone spent over $220,000 in fiscal year 1969—almost 8 percent of the total allocated for the maintenance of recreation areas—to undo what is termed vandalism damage. Nationwide, throughout the Forest Service, over $2 million of such damage was caused in fiscal year 1969.

As more and more people utilize the open multiple-use lands under the management of the Bureau of Land Management for picniking, camping, hunting,

[21] The Intermountain Region encompasses all of Utah and Nevada, a portion of western Wyoming and southern and central Idaho.



Off-road vehicular use must be controlled in public land areas that are easily erodible.



Spraying for insect control could have serious consequences, from the standpoint of ecological balance and adverse effect on animals and the human population.

fishing, and other leisure time pursuits, there will be increased threats to the environment unless we take strong steps now to avoid them. Elsewhere in this report, we have pointed out the fact that trespass control has been difficult, and *we recommend that statutory authority for policing Federal lands be granted to those agencies, such as the Forest Service and Bureau of Land Management, not now having such authority*. We believe that the knowledge that the law makes the user liable to restore damaged areas, and that the agency having responsibility has policing authority, will in itself act to curb abuse of the environment. In any event, the new policing authority will provide the United States with a tool that it does not now have in the apprehension of vandals and others who cause environmental disturbance.

Environmental Rehabilitation

Recommendation 26: Public land areas in need of environmental rehabilitation should be inventoried and the Federal Government should undertake such rehabilitation. Funds should be appropriated as soon as practical for environmental management and rehabilitation research.

Past activities on the public lands have resulted in lowered environmental quality in many places. As indicated above, there have been many causes for the degradation. It is impracticable, except where contract provisions have been violated, to try now to seek out those responsible and ask them to effect rehabilitation. *Nonetheless, it is essential that damage to the environment be corrected, and we recommend that actions be taken to restore or rehabilitate such areas.* The first step in this direction is an inventory of all instances of lowered environmental quality generated by past uses of the public lands.

Concurrently with the inventory, *we recommend an immediate accelerated program of research into the procedures and methods of maintaining and restoring environmental quality on the public lands.* We found that such efforts have been virtually nonexistent in the past. Because some adverse impacts have occurred, and more will occur if management practices are not improved, research is essential without delay.

In considering legislation for this purpose, Con-

gress should keep in mind the considerable receipts generated from the sale and use of the public lands and their resources.

We see no alternative to making the Federal Government responsible for rehabilitating areas that were abused in past years. Where those whose actions resulted in lowered environmental conditions can be identified, and the terms under which they were using the public lands made them responsible for maintaining high quality environmental conditions, they should be required to fulfill their obligation. Generally, however, there were no such conditions, and to impose this responsibility on them now would, in our opinion, be unfair.

Natural Areas

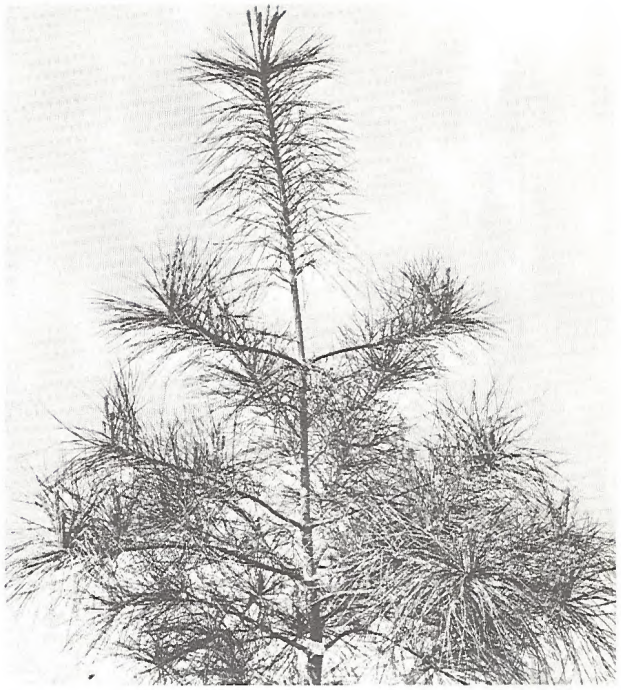
> Recommendation 27: Congress should provide for the creation and preservation of a natural area system for scientific and educational purposes.

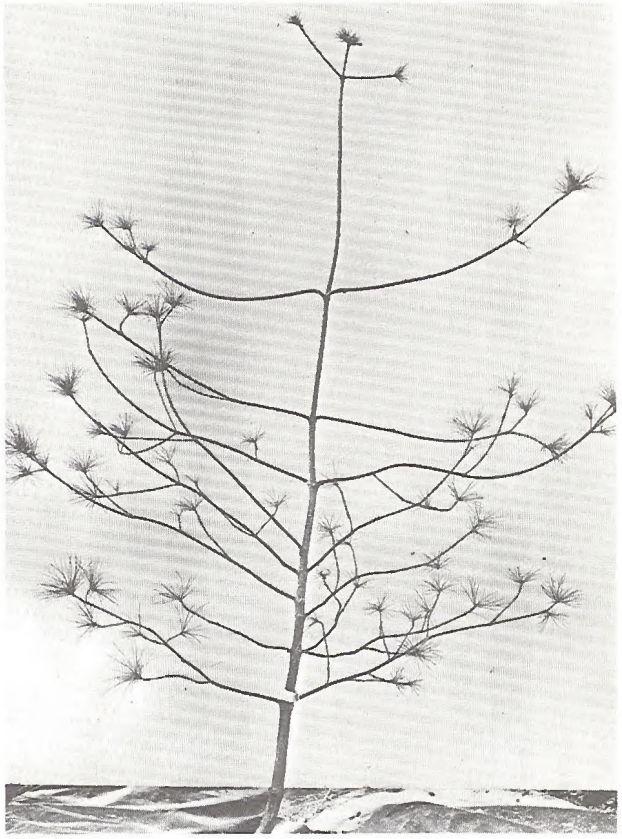
By 1968 Federal agencies had designated nearly 900,000 acres of public lands as natural areas, the individual units ranging in size from a few acres to 134,000. Similar preservation efforts have been undertaken on private and state owned land by states, educational institutions, and private organizations.

Natural areas are protected to permit natural biological and physical processes to take place with a minimum of interference. The preservation of such areas is for the primary purposes of research and education. As the need to understand the ecological consequences of man's activities has become more evident, the preservation of examples of all significant types of ecosystems has become important to provide a basis for comparisons in the study of the natural environment. It appears that these requirements can be met with a relatively small amount of land. We approve preservation measures of this kind.

The Federal land-managing agencies have proceeded quite independently in establishing natural areas, with no uniform guidelines for agency designations. We believe Congress should give formal status to the natural area program and provide for coordination to assure that all essential scientific and educational needs are met. The coordination we urge, perhaps by the Office of Science and Technology in the Executive Office of the President, would provide an inventory of sites valuable for ecological study, a plan to assure representation of all important natural situations, and the avoidance of duplication of effort.

We also propose that educational institutions be encouraged to assume administrative responsibility for federally-owned natural areas under permit or lease arrangements with the Federal land agencies. Such arrangements offer assurance that other uses, such as recreation, would not be allowed to interfere





Tests by the U.S. Department of Agriculture show the effect of urban pollution on white pines. Tree above was grown free of polluted air. The culprit is either sulfur dioxide, ozone, or an interacting mixture of both, which are primary ingredients in the urban pollution mix.

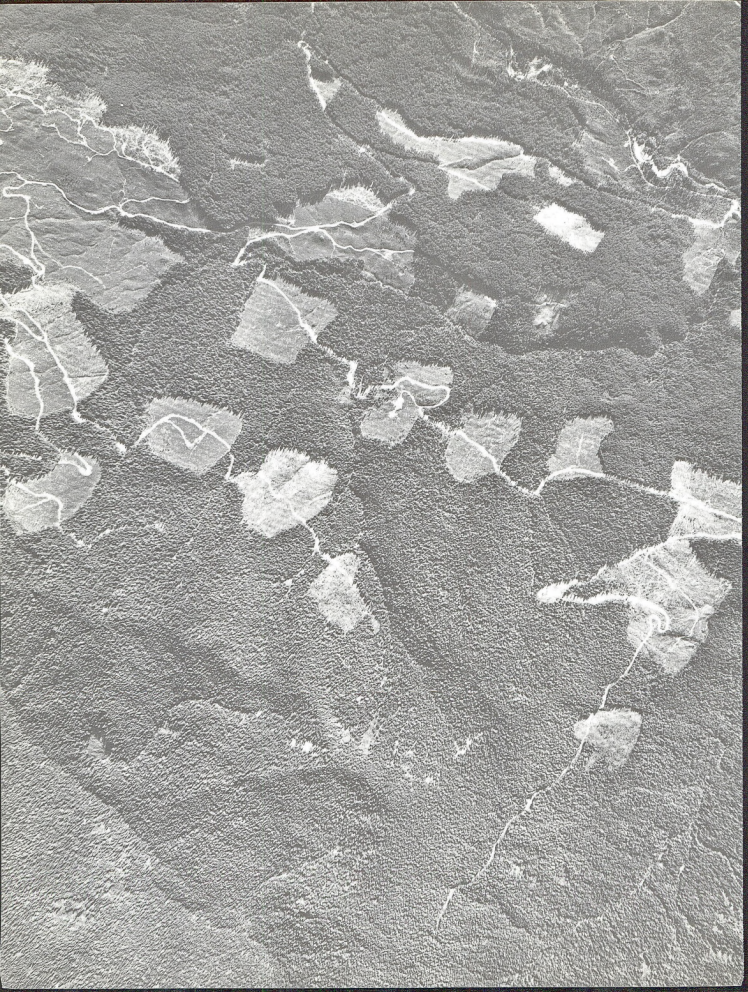
with the educational and scientific purposes of these natural areas, will place administrative responsibility with those who will be conducting research and, at the same time, will lessen the cost borne by the Federal Government.

Summary

The sum total of the recommendations in this chapter is to make the public lands of the United States examples for the rest of the country in how to manage and use lands and resources with due regard for the environment. It is essential that this be done if we are to hope that citizens will engage in the practices that government urges.

By expressing our concern for what happens in lands adjacent to the public lands, as well as the environment on the public lands, we give recognition to the central factors of ecology which has been repeated many times, but of which we must not lose sight: Everything is connected to everything else. It is this fact that may make effective environmental quality goals and controls on the remote public lands meaningful in fighting the environmental degradation that has already occured in the highly industrialized and urbanized areas of the country. The immediate, more direct benefit, of course, will be that we protect the public land areas from being subjected to pollution and other forms of blight that plague so much of the Nation.

We submit that the recommendations we make in this report will accomplish the objectives we believe to be so essential.



CHAPTER FIVE

Timber Resources

THE FEDERAL GOVERNMENT has a dominant position in the Nation's timber economy. Just before and after the beginning of the 20th century, vast areas of timberland were reserved from disposal under the public land laws for the express purpose of guaranteeing that the country would have a continuous supply of timber to meet its future needs. These reserves were later supplemented by additional timberlands acquired primarily in the eastern states.

As a result, the Federal Government now owns some 20 percent of all of the country's commercial forest land, nearly 40 percent of its supply of merchantable timber and over 60 percent of its softwood sawtimber. The degree of potential Federal control over the supply of timber is greater than over that of any other commodity presently produced from public lands.

In part because of the success of management programs on privately owned timberlands, in part because of the conservative manner in which Federal timber has been permitted to enter the economy in the past, and in part because of continuing changes in the wood needs of the country, the Nation's ability to meet its long-range future wood needs is promising, as long as the timber grown on both public and private lands is made available for harvesting. This is in sharp contrast to judgments often made as recently as the 1930's and 1940's.

At the present time, the wood needs of the United States are increasing rapidly. Also, exports of logs, particularly to Japan, increased dramatically during the 1960's. Forest lands, both public and private, are being withdrawn from timber harvesting and set aside for other purposes. Although private timberlands met the major burden of our wood requirements during the first half of this century, the pressure is now on public lands to supply much of the country's wood needs in the near future. Despite this tremendous responsibility of the Federal Government, the statutes applicable to most of the Federal forest lands provide at best inadequate policy guidelines directing how these public lands are to be managed or timber made available to meet our needs.

Regardless of the reasons why the Federal Government became, by far, the country's leading owner and manager of forest lands and timber, and regardless of the relevancy of these reasons to today's conditions, the facts are:

—Federally owned timber is vital to the wood economy of the country;
—Federally owned timber is vital to the economies of many communities;
—Federal policies with respect to the sale of this timber can result in the life or death of firms that use it;
—The Federal Government's dominance as a supplier of timber will continue in the future.

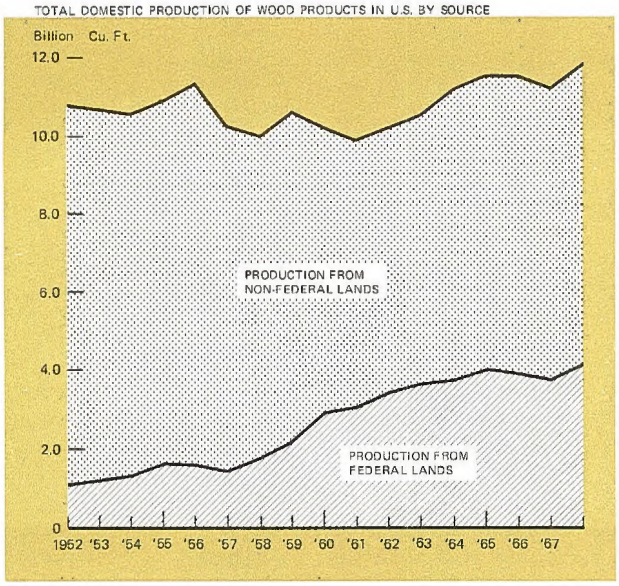
Although this chapter sets forth the Commission's recommendations concerning timber as a commodity of the public lands, the recommendations were arrived at, as were all our recommendations, only after giving full consideration to all other uses that can and must be made of the forests. This is emphasized because we recognize that the potential for conflicts among competing uses is particularly high on public forest lands. While wood harvesting, watershed protection, and grazing were always primary purposes of forests on public lands, recreation use, including wilderness areas, has assumed a growing importance in recent years. The availability of a continuing timber supply depends in part on the extent to which public forest lands are allocated to meet the demands for other uses. Despite this and the fact that, of all the various classes of public lands, forest lands generally are capable of producing the most combinations of commodities and, in many cases, the highest values, there are no statutory guidelines to indicate how the various uses are to be balanced.

The diversity and intensity of use dictates that great care be taken on forest lands to assure that environmental values are not lost through poor forestry practices. This is especially important on

those forest lands that are managed primarily for the production of timber. The harvesting of timber, of course, can, when not exercised with care, have very substantial effects on the scenic and watershed values of forest land as well as on surrounding lands and downstream water flows. The United States cannot afford to have its timberlands used so as to degrade the surrounding environment.

We also believe it is important to note the possible effects of some management practices on the lands and forests themselves. Timber management on public lands has progressed over the past few decades from primarily fire protection to the point where a variety of techniques, including controlled fires, pesticides, herbicides, fertilizers, and mechanical equipment, is used. These techniques and the practice of planting large areas to a single species can have harmful environmental consequences over large areas of land. The use of these practices should not be stopped entirely, but, as discussed generally in the chapter on Public Land Policy and the Environment, we favor continued surveillance and monitoring of such programs. These must be supported by a continuing program of research to ascertain all the facts about presently used practices and to develop new and improved practices that will reduce environmental hazards.

In accord with out general recommendations that artificial distinctions between classes of land be eliminated, we believe that policies guiding timber production and use should generally be the same for all public lands. We see no reasons, other than those dictated by varying regional conditions, why the best



Federal lands are contributing an increasing share of our domestic wood production.

available practices should not be adopted by all agencies.

There are significant differences now in some timber policies, in the same geographic area, between the Forest Service and the Bureau of Land Management. For example, the Forest Service sells timber on a royalty basis, while BLM sells timber on a lump sum basis, and the methods for measuring timber volumes as a basis for payment are different. Methods of financing timber management programs and timber access road construction differ between the two bureaus. The other agencies managing public lands also differ somewhat. We find that these differences are confusing to the public and should not be retained.

Dominant Use Timber Production Units

Recommendation 28: There should be a statutory requirement that those public lands that are highly productive for timber be classified for commercial timber production as the dominant use, consistent with the Commission's concept of how multiple use should be applied in practice.

We have previously recommended the concept of dominant use classifications as a means of implementing land use planning on public lands not designated by statute for a primary use.[1] This concept finds ready application in the case of planning for timber production on public lands.

Legislation creating national parks and wilderness areas, and administrative determinations without legislative sanction placing public forest lands in noncutting zones, and restricting the cut on other areas, have reduced the area of public land—and the value of timber available from it—that is necessary to support the timber industry. In some cases, despite the absence of guidance from Congress, which under the Constitution has the authority to make such rules, timber stands in which substantial sums of public money have been invested are set aside for other use before the timber can be harvested and the public can reap the benefits of its investment.

The amount of forested public land reserved from harvesting or placed under special cutting limitations more than doubled between 1957 and 1967.[2] Although data are not available to show the extent of the continuing pressure on private forests, land is being cleared for many uses such as residential, commercial, and highway construction. Also signif-

[1] See Chapter Three, Planning Future Public Land Use, for a discussion of the Commission's recommendation on this point.

[2] George Banzhaf & Company, *Public Land Timber Policy*, PLLRC Study Report, 1969, App. G.

icant is the fact that much private forest land is made unavailable for timber harvesting because of the increasing ownership of forest lands by people interested primarily in recreation values.

Lack of assurance that public land timber will be available for harvesting in the future results in:

—Lack of security for investment planning by timber industry firms using public land timber, and a concomitant unwillingness to modernize their plants and equipment;

—Short-range planning by communities whose economies are dependent on timber harvested from the public lands;

—Unwillingness on the part of the Bureau of the Budget to recommend needed levels of investments in timber management;

—Concern over the country's ability to continue to meet increasing levels of consumption of wood products without a substantial increase in timber prices;

—Resistance to all proposals, however meritorious, to withdraw public land from timber harvesting.

The fact is that the purposes of the 1897 Organic Act [3] of the Forest Service, whose major aim was to assure future timber supplies, have been obscured by changing conditions and needs. Yet, the United States continues to require timber and wood products in increasing quantities. The Commission believes that these and other requirements can best be met by the identification of highly productive areas of public forest lands administered by the Forest Service and the Bureau of Land Management, their classification for commercial timber production as the dominant use, and their inclusion in separate timber management systems. *To manage these systems separately from other public lands, there should be created a Federal timber corporation or division within the Forest Service and the Bureau of Land Management.*[4]

In harmony with our belief that effective multiple use planning can be accomplished only by classifying lands for their highest and best uses, *lands classified for inclusion in this system would be those that are capable of efficient, high quality timber production, and are not uniquely valuable for other uses.* By no means would all of the public lands currently defined by the Forest Service as "commercial forest lands" be included in the system. The Forest Service definition, for example, requires, among other things, that such lands be capable of producing at least 25 cubic feet of timber per acre per year. This standard excludes only those forest lands of the very poorest quality. Much of the land defined as commercial is at higher elevations in the West or on ridges or swamps of low productivity in the East. The Commission does not intend that these lower quality timberlands be included in timber production units.

Most of the forest lands to be included in such units are in Alaska, California, Idaho, western Montana, Oregon, Washington, and the southern states. These lands are highly productive; for example, about 70 percent of the national forest lands in the Douglas-fir region of Oregon and Washington is capable of producing more than 85 cubic feet per acre per year. These areas are already the ones where the greatest wood processing capacity is located. However, there are other areas of public lands that should be considered for inclusion in such units. The decision should rest on the merits of each case.

Criteria for establishing timber production as a dominant use on public forest lands must involve consideration of other existing or potential uses. Those lands having a unique potential for other uses should not be included in timber production units. Critical watersheds, for example, where cutting may be prohibited or sharply limited, should not be included. Similarly, important, or potentially important, intensive recreation use sites close to urban areas should not be included. On the other hand, watershed, recreation, or other uses would not be precluded on lands in the system.

Timber production should be the dominant use, but secondary uses should be permitted wherever they are compatible with the dominant use. Generally these areas would be available for recreation use except during the period when timber is being harvested and the time thereafter required to permit new growth to get started. It may also be necessary to impose greater restrictions than now exist on grazing during periods when timber stands are being regenerated.

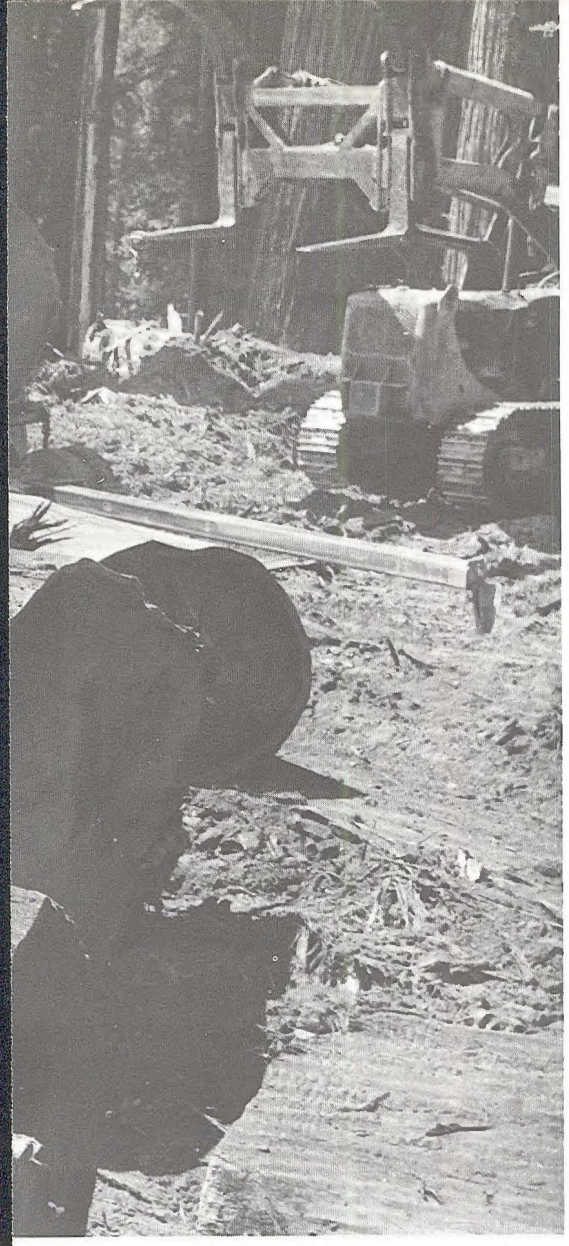
The actual limitations placed on other uses would not be as severe as they might appear at first glance. The best sites for timber growing are mostly at lower or middle elevations in the West and in the southern states. In the West, outdoor recreation use tends to occur at the higher elevations where the scenery is more spectacular, where there is snow for winter sports, and where the ground cover is more open and suitable for hiking and other summer sports. The conflicts resulting from outdoor recreation on the better national forest timber production areas in the South occur less frequently than in other regions.

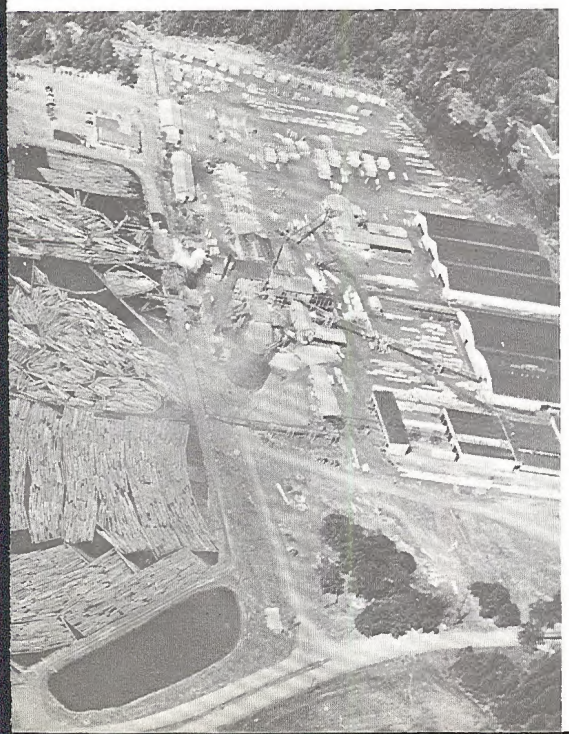
The total area that would be included in timber production units would probably be less than one-half of the total forest land now in Federal ownership, and less than one-fourth of the total area of the na-

[3] 16 U.S.C. §§ 473–478, 479–482, 551 (1964).

[4] If merger of the Forest Service and the Department of the Interior is accomplished, as recommended in Chapter Twenty, Organization, Administration, and Budgeting Policy, merger into one system should be possible.

Federally owned timber is vital to the wood economy of the country and to the economies of many communities. The Federal Government owns more than 60 percent of the country's softwood sawtimber.





tional forests. Although the area of forest land that would be so designated does not make up a majority of all federally owned forest lands, this highly productive part of the total is vital as a source of timber. This is the land that will react most readily to investments in timber management and will be the key source of public timber for industrial uses in the future.

Financing

> Recommendation 29: Federal programs on timber production units should be financed by appropriations from a revolving fund made up of receipts from timber sales on these units. Financing for development and use of public forest lands, other than those classified for timber production as the dominant use, would be by appropriation of funds unrelated to receipts from the sale of timber.

On the more productive public forest lands, receipts from timber sales generally exceed the costs of financing not only the administration of timber sales, but the overall level of investments in timber management. This is not true of much of the lower quality forest lands.

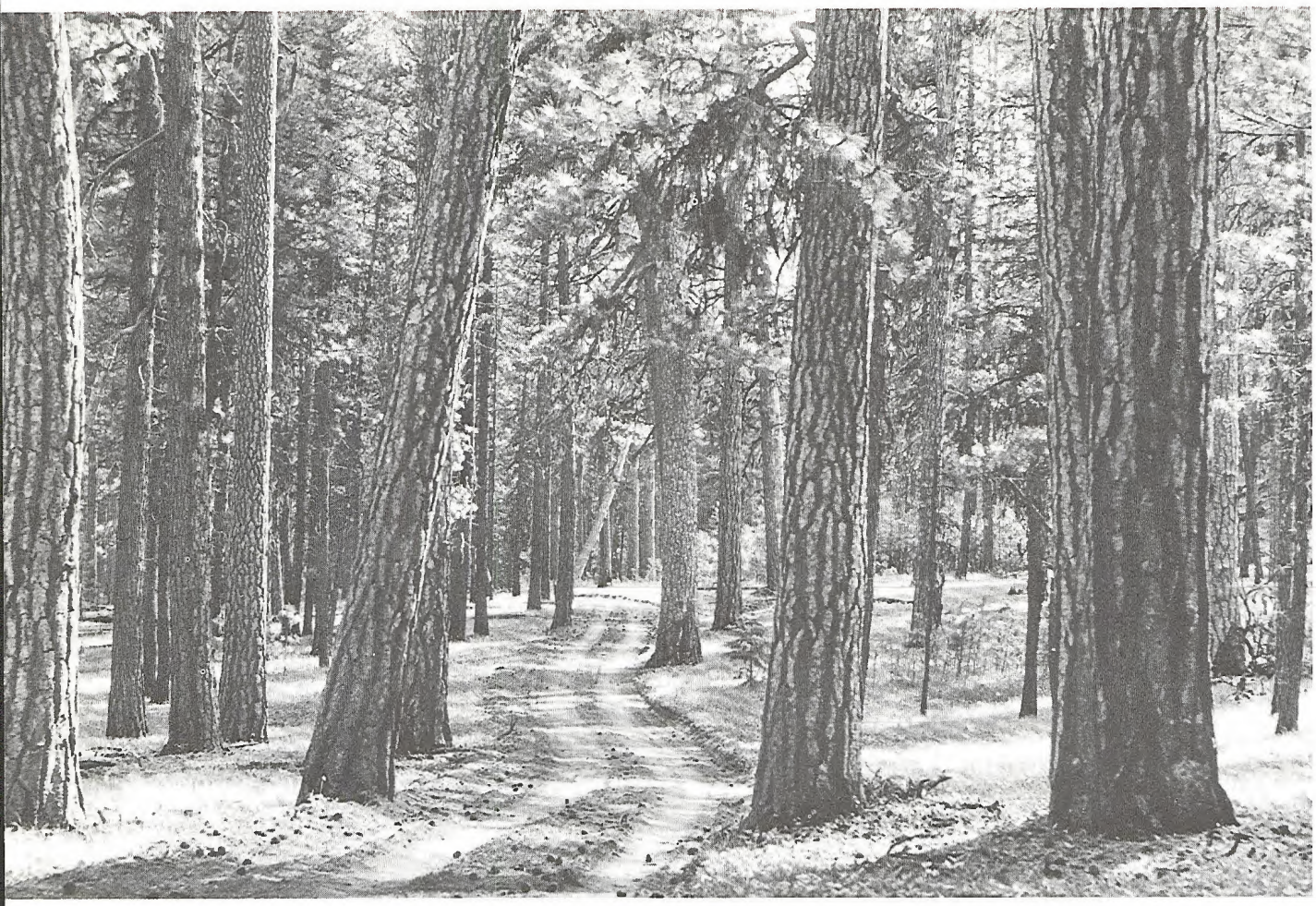
A revolving-fund method of financing these timber production units would provide the land management agencies with a reasonably assured source of funds to permit long-term investment and management programs; it would assure the industry of a fairly certain continuity of supply; and it would provide Congress and the people of the country with a means of measuring the success of this economic program in economic terms.

Such a fund, as envisioned by the Commission, would not bypass the congressional appropriation process. We propose that no money would be available to the agencies unless appropriated, even though the money came from the production fund. *Funds for timber production on other forested public lands should be provided by direct appropriation from the Treasury as justified.*

Back-door financing, i.e., payments that do not go through the appropriation process, of timber production programs should be ended, whether in the form of purchaser-built access roads, reforestation payments under the Knutson-Vandenberg Act,[5] *or any other form of indirect appropriation. When timber is sold from public lands, its full value should be collected by the United States and deposited either in the timber production fund or the Treasury.*

The Federal timber corporation or division we recommend be established within the administering

[5] 16 U.S.C. § 576 (1964).



To help meet future timber needs, highly productive timber areas in the National Forests should be classified for commercial timber production. Such areas comprise less than one-fourth of National Forest acreage.

agency would be charged with overseeing the management of the timber dominant areas and for maintaining records of both expenditures and receipts. Keeping records in a manner that will permit comparisons of expenditures with receipts will be a key to the success of this approach.

Use of Economic Considerations

Recommendation 30: Dominant timber production units should be managed primarily on the basis of economic factors so as to maximize net returns to the Federal Treasury. Such factors should also play an important but not primary role in timber management on other public lands.

Timber is an economic good that is typically grown and harvested on private, as well as public, lands. The market for timber is well established, just as it is for most other goods and services used by the American public. This system generally works well by producing the desired goods and services in an efficient manner and allocating them to those who need or desire particular products. We find no compelling reason to treat public land timber differently from the way it would be treated by the owners of well managed private forest lands.

It appears to the Commission that timber management and investment programs will be most effective if the market for timber is generally accepted as a guide for Federal actions. On dominant timber production areas, this will mean that the primary directive to the public land management agencies should be to maximize the net dollar return to the Federal Treasury in the long run. This does not mean, of course, that other considerations on these lands are not important. We do not believe that the use of economic guidelines will lead to a deterioration of the land and its capacity to produce other values. Timber production is consistent in many cases with the production of other values and long-term timber

production requires the maintenance of the basic productivity of the land.

Although the position of the Federal Government as the Nation's major owner of timber and timberlands leaves it open to the charge that it controls timber markets through the exercise of monopoly power, no evidence was found to indicate that this is actually occurring. Nevertheless, it would be reassuring to the users of public timber to have it well understood, and stated in law, that the Federal Government is not to extract monopoly profits or to use its position to control timber markets. This is particularly important with respect to timber sales to firms dependent on the public lands for their supply of timber.

We have found that failure to make needed economic investments in Federal timberlands has resulted in failure of the Federal agencies to meet their share of the Nation's wood requirements today, even though protection of other values was not involved. Of particular note is timber access road construction, which has lagged behind needs in past years. As a result, considerable areas of timber that could be harvested are inaccessible, and salvage and protection programs have been hampered.

Our recommended approach to the use of Federal funds in timber production programs, utilizing sound conservation practices, will result in higher receipts from timber sales over the long run, and in greater expenditures per acre than at present for the areas involved, without depleting this natural resource. Average annual timber production on these areas will be increased substantially by directing the land management agencies to maximize the net return to the Federal Treasury. The Commission notes that there are many opportunities on national forest lands for investments that would more than pay for themselves.[6]

Economic Factors

Recommendation 31: Major timber management decisions, including allowable-cut determinations, should include specific consideration of economic factors.

Although timber is an economic good, and there are data on the costs and returns to timber management, the Commission found that the public land agencies do not generally make specific economic analyses as a basis for their management decisions. Allowable-cut determinations, which provide a basis for determining most of the timber programs, are particularly confusing with respect to the use of economic factors. Those that are used are commonly hidden behind cumbersome definitions and are combined with other assumptions in complicated formulae so that their actual use and effects are completely obscured.[7]

The Multiple Use and Sustained Yield Act of 1960[8] confirmed the policy long enforced by the Forest Service that timber harvesting should be accomplished on a sustained yield basis. This has been interpreted by the management agency to require establishing annual allowable cuts that do not vary widely from one year to the next. Biological factors predominate in the methods used to determine allowable cuts. The species mix, growth rate and age classes of the existing timber stands all enter into the resulting calculations.

The public lands have large volumes of overmature timber, in part because of the conservative cutting policies that have been followed and in part because these forest lands were more inaccessible than the private lands that were the base for logging in past years. Consequently, mortality rates are high and net annual timber growth is less than in managed forests with a lower average age. For example, the annual growth rate in western national forests is somewhat less than one-half of 1 percent, while managed forests can be expected to grow at several times this rate. To convert an over-mature forest with large volume of timber to a balanced managed forest requires liquidating the old growth timber over a period of time. The public land agencies have generally chosen to do this over a fairly long period of time so that the volume of timber harvested from one period to the next does not vary considerably. On the other hand, commercial forest operators have usually cut old growth faster so that the goal of a balanced managed forest capable of rapid growth is reached sooner. Such a policy includes a larger allowable cut in the earlier stages and a reduction in allowable cut later on as the age classes become balanced and the annual net growth rate becomes stabilized. To an extent, investments in reforestation and thinning can tend to offset this reduction, although the extent of their effect depends on the length of time set for converting old growth to a managed forest.

In Federal forests the rotation age, i.e., the time to grow timber from seed until harvest, has been traditionally determined by the log size suitable for

[6] George Banzhaf & Company, *Public Land Timber Policy*, Ch. 8. PLLRC Study Report, 1969.

[7] Allowable cut is the amount of timber that may be harvested from a timber management unit over a prescribed period of time in accordance with a timber management plan designed to provide a sustained flow of timber over a period of years. A detailed discussion of the methods used in planning the annual cut is contained in George Banzhaf & Company, *Public Land Timber Policy*, Ch. 6. PLLRC Study Report, 1969.

[8] 16 U.S.C. §§ 528–531 (1964).

manufacture into lumber. These large sizes are not required to meet the increasing demands for pulpwood and kindred products, for which shorter rotation periods and younger trees are more suitable. These changes in the demand for wood products should be reflected in allowable cut determinations.

We have also noted that the demand for wood products tends to fluctuate with changes in the economic cycle, and the availability of construction credit. Since the existing allowable cut policies are designed to lead to approximately equal timber sale offerings each year, fluctuations in the demand for timber are not taken into account in any important sense. The restriction on sales offerings in any one year or period tends toward greater fluctuations in the cut of non-Federal timber and greater fluctuations in prices of all timber than would be the case if Federal policies were more flexible.

Sales Procedures

Recommendation 32: Timber sales procedures should be simplified wherever possible.

At present, timber from the public lands is generally sold at market value, and the market itself usually determines the price through competitive processes. However, the Commission found that the process of selling timber is confusing in its complexity and ambiguity.

Much of the confusion arises because of statutory requirements that timber be sold at not less than its appraised value. The Commission believes that the Federal Government should receive the same price for its timber as would be received by a private landowner. Therefore, the competitive market should serve as the guide for the price that is received by the Federal Government. In fact, it appears that in many cases, competition can be relied on to set prices without resort to costly appraisals. Appraisals should be viewed as a means of establishing a minimum price for timber wherever competition cannot be relied on to set a price that reflects the value of the timber. But in all cases, the pricing objective should be to obtain the competitive price.

There must be flexibility in both the timing and the size of sales. Because of varying needs in different regions and at different times, we do not believe that detailed statutory directives can be devised. The land management agencies must recognize this and adjust their offerings accordingly.

In particular, we note the problems caused by the very long-term commitments of public land timber in large sales in Alaska. These sales, some of which have committed national forest timber to a single firm for 55 years, greatly limit the flexibility of the public land agencies in meeting changing conditions and changing timber values.

Coupled with flexibility there should, nonetheless, be some degree of regularity. The assurance of regular sales would complement our earlier observation that the establishment of timber production units on an economic basis would promise the availability of a continued supply, by providing the vehicle to move that supply to the market.

We agree with those who have urged that bidders show financial responsibility and, where applicable, a satisfactory past performance on timber sales operations. Among the reasons for this are: (1) the degradation of the environment that ensues from an incomplete job or from failure to clean up the site; and (2) extensions of time for completion of contracts, which also have the effect of withholding timber from the consumer. It follows, as a corollary, that land management agencies should carefully scrutinize any request for extensions of time, and grant such extensions only when specific conditions set forth in the regulations are met.

Methods of Sale

We recommend that, for both economic reasons and in the interests of conservation, the method of selling timber on the lump sum, or cruise, basis be adopted generally by the Federal land management agencies when selling timber. The Forest Service and Bureau of Land Management differ in the basis on which each sells timber. The Forest Service generally uses scale selling, in which payment is based on the measurement of the volume of each log removed from the forest. The Bureau of Land Management, on the other hand, uses a "cruise," or estimate of the total volume of timber in a sale, as the basis for a lump sum payment.

The economics of logging is such that fewer logs and marginal trees are left in the woods under cruise, or lump sum, sales than under scale sales. The interests of the purchaser, once he has paid for all the timber in a lump sum sale, encourage him to utilize all of the timber that will pay the direct costs of logging. This leads to complete utilization with a minimum need for administrative surveillance. Not only does the better utilization leave the forest less susceptible to insect, disease, and fire, but the lack of a need to scale each log results in lower costs in administering timber sales. Lump sum sales encourage more thorough logging and, therefore, produce more favorable environmental conditions than scale sales.

Access Road Construction

Recommendation 33: There should be an accelerated program of timber access road construction.

The practice followed by the public land management agencies of having timber access roads constructed in large part as an adjunct of timber sales has limited the construction of those roads. By requiring timber operators, who are not, or do not desire to become, road builders, to handle road construction activities, the agencies have also limited some legitimate operators from obtaining public timber sales. In many instances roads are required to a standard higher than necessary merely to harvest timber.

Agency reliance on purchaser-built timber access roads has a number of other serious disadvantages. First, road development must be keyed to timber sales which can lead to inefficient design and size specifications. Second, it can lead to undesirable harvest schedules. And third, lack of suitable access road networks has made salvage of dead or dying timber impossible as well as inhibiting measures to control or prevent disease and fire losses. Timber saved as a result of suitable access would be reflected subsequently in net growth computations and allowable cuts.

The Commission believes that a "catch-up" program of access road construction must be authorized and supported with appropriations. These access roads would make available merchantable timber within the dominant timber production units recommended above. The initial funding for these roads will have to come either from direct appropriations from the Treasury, or from the revolving fund we have proposed, if that fund in its inception is granted borrowing authority.

In addition, by making these new areas available for the protection, management, and harvesting of public land timber, this accelerated road program, which we believe could be completed in a 10-year period, would each year permit the salvage and sale of considerable timber that must now be abandoned after it has either fallen or been blown down. As part of the protection of the lands, these roads would provide access for fire, insect, and disease control. It would also allow the agencies to make economic investments and carry on management programs in areas that cannot be reached now. Finally, it would simplify existing timber sales programs by separating road construction from timber harvesting, and eliminating allowances for road construction costs from the timber sales procedures, a practice we suggest earlier in this chapter as one to be ended.

Dependent Communities and Firms

Recommendation 34: Communities and firms dependent on public land timber should be given consideration in the management and disposal of public land timber.

Many communities and firms, particularly in the western United States, are dependent on public land timber. If the public lands were suddenly eliminated as a source of timber, some of these communities and firms would cease to exist. Others would experience very difficult times.

Through its timber management and sales policies, the Federal Government over the years has in effect made a commitment to communities and firms that it will make timber available to assure their continued existence. The provision of the 1968 Foreign Aid Act [9] that limits exports of logs to Japan from the western public lands and the long-standing primary processing requirement for timber harvested from the national forests in Alaska [10] are examples. The Small Business Administration set-aside program to limit eligibility for some timber sales to firms having less than 500 employees is an example of a regulatory commitment to small firms.[11]

The Commission recognizes that changes are continually taking place both in the structure of the timber industry and in the viability of particular firms and communities. But we also recognize that the Federal Government has an obligation to those who depend on public lands for their livelihood. Federal policy should be directed at achieving a balance between healthy change and the assurance of opportunity for existing users and communities dependent on Federal timber.

The use of a procedure whereby timber "quotas" were allocated to dependent areas was attempted in the past to provide an assured supply of timber to firms in each designated area. The Sustained Yield Unit Act of 1944 [12] provided a statutory basis for assigning quotas to areas established under that Act. A number of units were established, one of which involves joint consideration for management purposes of public and private timberlands in an area. We have found that these attempts to use quotas as a means of assuring timber supplies to a firm or an area have not been entirely successful. Their usefulness is limited by changing conditions.

Obviously, where there is a limited timber supply, the allocation of timber to one firm restricts the opportunities for another. The long-term commit-

[9] 16 U.S.C. § 617 (Supp. V, 1970).

[10] 36 C.F.R. § 221.3(c) (1970).

[11] George Banzhaf & Company, *Public Land Timber Policy*. PLLRC Study Report, 1969.

[12] 16 U.S.C. §§ 583–583i (1964).

A "catch-up" program of access road construction on Federal forest lands should be authorized by Congress. Such roads facilitate forest management and forest fire-fighting, as well as timber harvesting, recreation, and other uses of public lands.

ment of Federal timber to the existing sustained yield units under the 1944 Act has limited the flexibility of the Government and of the involved firms and communities to meet changing conditions. We do not believe that a quota system is a necessary tool for Federal policy and, furthermore, we believe that it is inconsistent with our free enterprise system. For the foregoing reasons, *we recommend that the 1944 Act be repealed with provisions, of course, for units now in operation to continue until terminated in ordinary course.*

Timber harvested from public lands should ordinarily be processed by domestic mills, but interstate shipment should not be limited. The export of unprocessed logs from public lands damages those firms and communities dependent on a public land timber supply.

Therefore, the ban on exports of public land logs should be continued. Those who export logs from their private lands should be prohibited from evading this policy by purchasing public land timber for their domestic needs.

The Commission believes that the United States should assure that small firms and dependent firms be given some opportunity to obtain public land timber. The current definition by the Small Business Administration of small firms as having less than 500 employees sets this limit at an unrealistically high level for the timber industry, where most firms have fewer employees. Accordingly, *the size limit for this industry in terms of qualifying for Small Business Administration assistance should be flexible enough to recognize actual conditions and to give real advantages to small firms when conditions warrant.*

The Commission also believes it desirable to allow

oral competitive bidding in public land timber sales. Oral auction, starting from a base fixed by sealed bids, permits the firm dependent on Federal timber to engage in bidding on sales it believes necessary to its existence, and limits the ability of other firms to squeeze it out of the market. Whenever it appears that smaller firms or dependent mills are disadvantaged by sealed bidding, the public land agencies should allow oral auction procedures.

Acquisition and Disposal

Recommendation 35: Timber production should not be used as a justification for acquisition or disposition of Federal public lands.

The Commission believes that neither increasing nor decreasing the area of Federal public forest lands can be justified on the basis of need for timber production. As stated earlier, the Federal Government already owns 20 percent of the Nation's forest land, 40 percent of its merchantable timber, and over 60 percent of its softwood sawtimber. The acquisition of additional forest land by the United States would not, in our opinion, improve the timber production potential of the country.

If there is a need to acquire additional land, it should be done; but the United States should not acquire private lands under the guise of a need for timber production when in fact the land is to be used for some other purpose.[13] While timber production should continue to be an authorized use of acquired forest lands, it is no longer by itself an appropriate reason for acquiring lands.

Public lands should not be transferred to state or private ownership simply to reduce the proportion of timber producing land in Federal ownership. We have found no significant differences between Federal and other lands in the manner in which timber is produced or sold that would require that public lands be transferred to the states or private ownership. Nor would "monopoly" be the basis for such transfer because, as indicated earlier in this chapter, no evidence was found that the Federal Government is exerting monopoly control over markets.

The many other public values that also occur on forest lands may themselves justify the retention of much of the Federal timberlands in public ownership.

We believe, however, that the public land agencies should be authorized to exchange, acquire, and dispose of forest lands when necessary to improve ownership patterns and to ease administrative problems. Limitations on general disposal and acquisition authority should not preclude meeting the necessities of administration.

Environmental Impacts

Recommendation 36: Controls to assure that timber harvesting is conducted so as to minimize adverse impacts on the environment on and off the public lands must be imposed.

The cutting of timber has substantial adverse effects on environmental values on a large area of public lands each year. The immediate environmental impacts of timber cutting are often dramatic, particularly where the technique of clear-cutting is used, although new growth may alleviate the situation in a relatively short time and restore the area to a substantial extent within a decade or two.

Where all the timber on an area is cut, the effect on scenic values and the quality of water flowing from the area is significant under many conditions typically encountered in logging public lands. Even on areas where only a portion of the trees are cut, effects on scenery and other environmental factors can be substantial. Inasmuch as logging is conducted to one degree or another on about a half million acres of public lands each year, it is evident that the potential for problems is great.

We realize, of course, that to halt all timber cutting on the public lands would not be in the public interest. We also note that the public land agencies have used roadside and streamside strip zones, in which cutting practices are prohibited or modified, to reduce some of the undesirable effects of logging on what they believe to be the visible scenery and water quality conditions.

In addition, they have planned timber harvesting and road construction to minimize environmental impacts, and have included provisions in timber sale contracts to control adverse impacts.[14] While such provisions generally might be adequate to accomplish environmental protection objectives, their enforcement, for various reasons, leaves much to be desired.[14] *Consequently, we conclude, consistent with the recommendations contained in the chapter on Public Land Policy and the Environment, that even greater efforts must be made in the future.*

[13] Acquisition of forest lands by the Forest Service is accomplished under the authority of the 1911 Weeks Law (16 U.S.C. §§ 500, 513–519, 521, 552, 563 (1964)). This provides for acquisition of forest lands "necessary to the regulation of the flow of navigable streams or for the production of timber." Forest Service acquisitions that are actually being accomplished for recreation purposes, as was the case of the Sylvania tract in Michigan, now must be justified on the basis of either timber production or watershed protection.

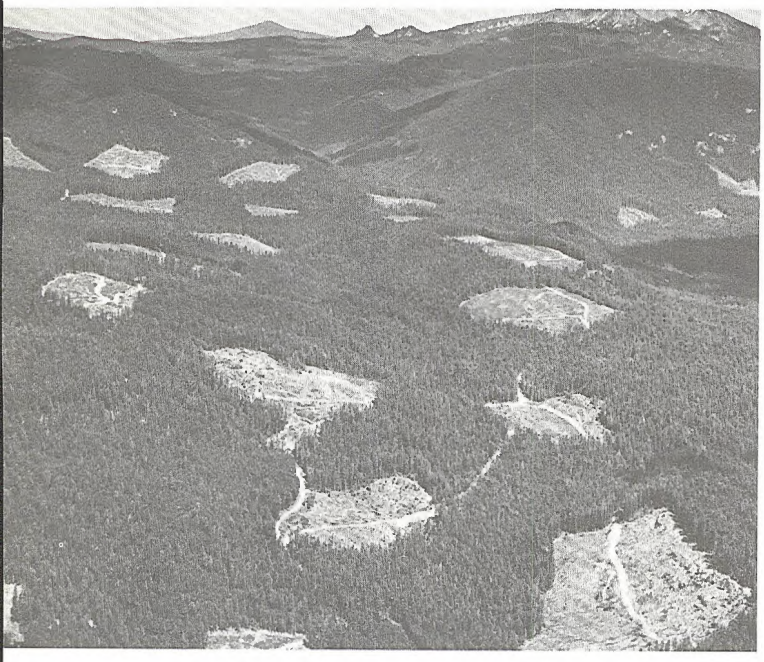
[14] Ira M. Heyman and Robert H. Twiss, *Legal and Administrative Framework for Environmental Management of the Public Lands.* PLLRC Study Report, 1970.

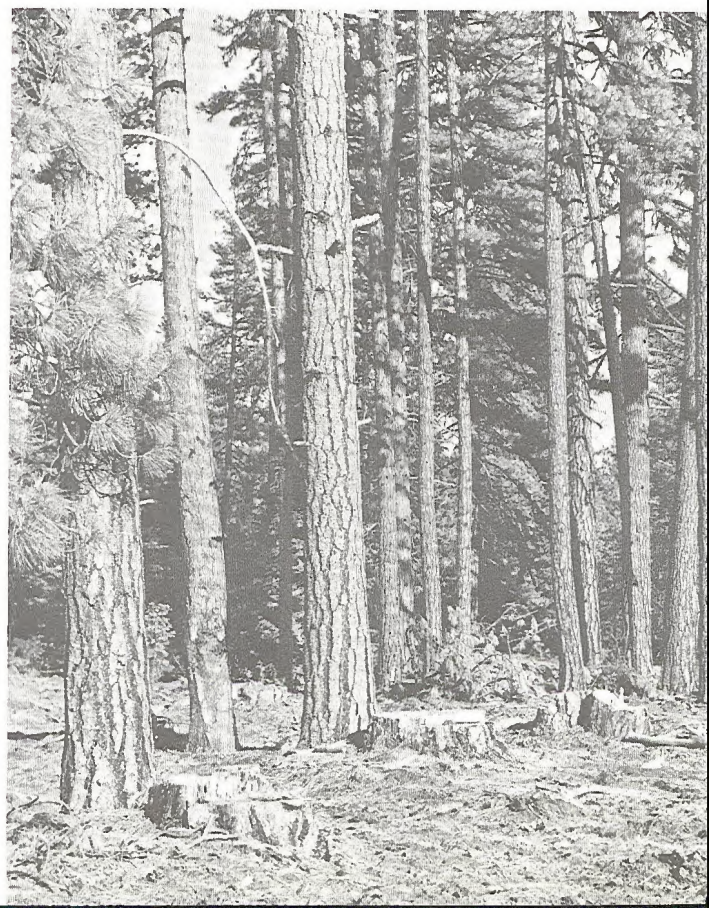
The results of most logging are esthetically unattractive to many people. The fact that future stands of timber will be attractive is not an acceptable rationale to them to tolerate unnecessary environmental effects now. The United States has an affirmative obligation to minimize the impact on the environment from logging on public lands, even though this is a complex task. *Such efforts should be directed not only to scenic effects, but air, soil, and water quality as well.*

The development of new multipurpose road systems and widespread public travel by air means that nearly all forest lands are visible to the public at large. Logging systems and layouts, in addition to protective roadside strips, must be designed to minimize scenic impacts. Logging practices must be such that waste is minimized, that logged areas are restored as soon as possible to an esthetically pleasing condition, and its effects, as well as those of road construction, on stream quality are minimized. We believe the agencies should make a continuing effort to improve controls over logging practices to assure that these desirable results are achieved. Further, a continuing research effort is necessary to find techniques and design systems that will help meet environmental quality objectives. Timber harvesting must also be recognized as a means of improving the condition and appearance of average forests. Public land forests must be managed through harvesting and regeneration so that we have an improved living resource for producing the multitude of values that can be obtained from healthy, growing woodlands.

Timber purchasers should be required to comply with Federal, state, and local environmental quality standards in processing plants using timber from the public lands. Timber processing plants, particularly pulp and paper mills, contribute to both air and water pollution. Regardless of whether plants that process timber in the first manufacturing stage are on or off the public lands, compliance with established environmental quality standards should be required as a condition of obtaining a timber sale contract. We believe this is a desirable way to help enforce established standards for air and water quality and other aspects of environmental quality.

Inasmuch as most environmental quality standards are established and policed by the states or local governments insofar as timber processing plants are likely to be concerned, we believe that close cooperation by the public land management agencies with the states and local governments can provide a workable means of implementing this recommendation. Responsibility for establishing that a plant is violating standards should generally rest with the state or local government. The public agencies would then





Clearcutting in patches (above) is vital to achieve natural reseeding in Douglas-fir stands. Not so in Ponderosa pine forests (right) where selective cutting is practiced.

use state or local actions as a basis for qualifying possible timber purchasers and for enforcing their failure to comply with contractual provisions.

We believe that this recommendation should be applied only to those plants that convert logs, pulpwood, or other roundwood products from the public lands into a new form. Thus, sawmills using logs from the public lands would be subject to such restrictions, but plants using lumber from these sawmills would not be. Since most plants using timber from the public lands are located close to their source of timber, the practical effect of this restriction would be felt mainly in public land areas. But we see no reason why plants that are further from the public lands should not be similarly restricted if a part of their timber comes directly from public lands.

We believe implementation of this recommendation will provide a practical means of requiring timber processing firms to comply with established environmental quality standards. We see it as an important adjunct to other methods of improving the quality of our day-to-day life.

CHAPTER SIX

Range Resources

GRAZING HAS ALWAYS been part of the western scene, and livestock ranching has had a major role in public land use. Prior to the arrival of settlers, buffalo and other wild animals were found wherever there was grass or browse. As settlement progressed, cattle and sheep replaced much of the wild animal population on the plains and deserts and on the mountain meadows, both on lands transferred to private ownership and on the gradually diminishing public domain. Now, cattle and sheep are not only an important foundation of western economy, but their presence is an accepted feature of the scenery and the environment.

Today, in the 11 coterminous western public land states, the Federal Government owns and administers approximately 273 million acres on which grazing is allowed. At one time or another during the year, domestic cattle and sheep graze on about half of these public lands. More of the public lands, in fact, are used for this purpose than for any other economic activity. The acreages are not generally grazed throughout the year, but at different seasons. Lower elevation lands are used primarily during the spring, while the higher elevation meadows in the national forests are used mainly in the summer.

The public lands account for about 3 percent of all the forage consumed by livestock in the United States. Although the total proportion contributed has been gradually decreasing, the public lands are still an important source of forage requirements in the West, where they supply some 12 percent of the total forage.

In addition, despite the apparent indication that the public lands are relatively unimportant to the national livestock economy, they do, for a number of reasons, play a significant role. In the first place, they are often crucial to individual ranch operations, supplementing the feed of private lands by supplying seasonal grazing. Without the privilege of grazing public lands, many ranches would cease to exist as economic units, or would be forced out of business due to the high cost of substituting other sources of feed. The western range livestock industry, which is built around the public lands, also must be viewed as an important source of range livestock for feeder lots throughout the West and Midwest.

The establishment of policies for the use of public lands for grazing recognized the integral relationship between public range land and private ranches. At one time, the public lands comprised a vast commons for grazing domestic livestock. These lands were also opened to settlement, which occurred generally along water courses in the semi-arid regions west of the 100th meridian. The settled lands were transferred into private ownership and became the base ranches to which was tied much of the use of the lands that remained in public ownership. Some use of those lands was also made by itinerant bands of sheep—driven from one area to another, depending on the availability of grass and browse.

The reservation of large areas of national forests was the first major action that led to the control of grazing on public lands. It provided the basis for the imposition of controls on the level of grazing use of the national forests, and also for the charging of fees for that use. Fees for national forest grazing were first adopted in 1905. (As pointed out below, it was not until 1934 that fees were also charged for grazing on remaining unappropriated public lands.) Grazing permits for forest lands were issued for specific numbers of animals using the lands per month (animal unit months, known as AUMs) and were granted to operators who owned sufficient "base property" to support that number of livestock when it was not on public land. Thus, public land grazing rights became linked to individual private ranches. The permitted levels of grazing in the national forests were reduced below the existing levels in an attempt to prevent damage to the forage resource.[1]

[1] Paul Wallace Gates and Robert W. Swenson, *History of Public Land Law Development*. PLLRC Study Report, 1968, Ch. XXI.

In 1934, with the passage of the Taylor Grazing Act,[2] much the same system of control was adopted for the remaining unappropriated public domain lands which are now administered by the Bureau of Land Management. The range livestock industry at that time was facing disaster because of the combination of the Depression, the results of uncontrolled use of the public range, and the deterioration of the range and the industry caused by severe weather conditions. In instituting a system for allotting grazing permits similar to that used on the national forests, the Taylor Act favored use of the public range by established ranch operations rather than by itinerant operators.

Some of the lands administered by Federal agencies other than the Forest Service and BLM are also grazed by domestic livestock when compatible with their basic missions. Both the Forest Service and BLM administer lands acquired for Land Utilization Projects in the 1930's—mostly in the Dakotas, Montana, Nebraska, and Wyoming. Although used primarily for grazing, they are not under the same policy structure that applies to the other grazing lands, but the differences are not important for our purposes.

Role of the Retained Public Lands

> Recommendation 37: Public land forage policies should be flexible, designed to attain maximum economic efficiency in the production and use of forage from the public land, and to support regional economic growth.

As one of its purposes, forage resource management on the public lands retained in Federal ownership has been designed to stabilize the livestock industry. Preference for grazing permits issued under the Taylor Grazing Act was given to landowners who were engaged in the livestock business, or to owners of water rights using the public lands prior to 1934. Those holding original permits, or those who succeed them, are given preference for the renewal of permits. In this way the pattern of livestock ranching, which was dependent upon public land grazing when the Act was passed, has been held constant.

Base property and commensurability requirements of the Forest Service have had much the same effect as the policies adopted under the Taylor Act.[3] Forest Service policies have resulted broadly in the continuation of ranching patterns that existed at the time permits for grazing in national forests were first issued in 1905.

Under the existing system, consolidation and expansion of ranching operations through the accumulation of public land can only be effected by the accumulation of unused base properties or acquisition of existing base property.

A more flexible policy, which would allow grazing privileges to be fully transferable upon request of the permittee, would result in transfer of privileges to those who are able to make more efficient use of them. Under such a policy the Government would remain neutral, and the market would control the allocation of public land forage. The Commission supports a policy which, while taking into consideration existing users, will provide flexibility in the future allocation of grazing privileges and equity for all users.

Public land forage policies are important to the regional economy. Income resulting from increases in the production and use of public land forage tends to spread through the regional economy rather than be siphoned off for the purchase of goods and services from other regions.[4] A policy which provides generally for the efficient use of forage resources will, therefore, be in support of regional economic growth. Such regional economic growth is a proper objective of public land forage policy and is a basis for many of the recommendations which follow.

Protection and Conservation of Range Lands

> Recommendation 38: The grazing of domestic livestock on the public lands should be consistent with the productivity of those lands.

The Taylor Grazing Act and the control of grazing on the national forests were directed at the conservation of natural resources as well as at the stabilization of the western livestock industry.

There are still substantial areas of land administered by the Bureau of Land Management and some managed by the Forest Service that are in a deteriorated condition. The deterioration of such areas is not easily abated.

Some lands respond to positive rehabilitation efforts. Others, however, have less productive soil and receive less precipitation. On these a delicate eco-

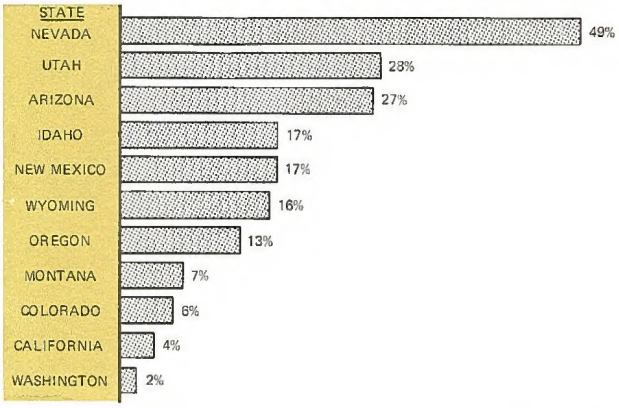
[2] 43 U.S.C. § 315 et seq. (1964).

[3] The capacity of the permittee's base property (the non-Federal land owned or controlled by the permittee) to support the permitted livestock during the period such livestock are off public land. For a discussion of these requirements, see University of Idaho, *The Forage Resource,* Ch. II. PLLRC Study Report, 1969.

[4] Consulting Services Corporation, *Impact of Public Lands on Selected Regional Economies.* PLLRC Study Report, 1970. A dollar increase in output of the range livestock industry will typically have a greater effect on the regional economy than a dollar increase in most manufacturing activities, for example.

Overgrazing (practiced at right of the fence line) spells suicide to a ranching operation (above). At left, a National Forest permittee and a District Ranger examine range condition.

CONTRIBUTION OF PUBLIC LAND FORAGE TO TOTAL FORAGE CONSUMPTION IN THE 11 WESTERN STATES, 1966



SOURCE: PLLRC STUDY, THE FORAGE RESOURCE, UNIVERSITY OF IDAHO, TABLE III B 48, PAGE 56, 1969.

Western ranches depend on forage consumed on public lands as a portion of their year-round supply.

logical balance exists which, once upset, may not be reestablished easily, if at all. The so-called frail lands in the more arid sections of the West, and the steep mountainous areas which have shallow soils and a short growing season, are examples.

The result of this deterioration in many areas has been degradation of the environment. Congressional guidelines for correcting such situations are minimal.

The objectives of public land policy should be explicit and not only place priority on the rehabilitation of deteriorated rangeland where possible, *but should exclude domestic livestock grazing from frail lands where necessary to protect and conserve the natural environment.*

Allocation of Grazing Privileges

Recommendation 39: Existing eligibility requirements should be retained for the allocation of grazing privileges up to recent levels of forage use. Increases in forage production above these levels should be allocated under new eligibility standards. Grazing permits for increased forage production above recent levels should be allocated by public auction among qualified applicants.

When initial allocations of grazing privileges were made, upper limits on the size of permits established by the Forest Service prevented large ranchers from dominating the range. Although there is no upper limit on the number of permitted livestock under the Taylor Grazing Act, the practices adopted under the Act effectively stabilized ranch sizes and operations as they existed when the Act was passed. Permit renewal policies, giving existing permittees preference, assure that these initial allocations will be continued.

The effect of the initial allocation system was to commit all of the rangeland area under the Forest Service and the Bureau of Land Management to actual or potential use for domestic livestock. First determinations of ranch base property capacity (commensurability) fixed a ceiling on the amount of potential public land grazing privilege to be allocated to each ranch.

Since administering agencies soon found that their public land range was not capable of supporting grazing to the extent of the sum total of all commensurability ratings, public land capacity was allocated proportionately to those ratings among all of the qualifying ranch properties. The maximum limit of public land grazing capacity, on both good and poor condition range, was allocated to individual ranch properties which, in most cases, qualified for more actual use than permitted.

As forage production from public land increased, the stated policy is to allocate the increase to each base property to the limit of its commensurability rating. However, we find that this policy has not always been observed in practice. At the same time, initial determinations of permitted use have generally been decreased when necessary to adjust use pressures to range capability in order to achieve natural restoration of vegetation.

The result of present practice is an over-commitment of land to support recognized dependent properties; continued pressure to upgrade forage production on land that should be removed from the recognized grazing land base; and a continuous pressure to satisfy the standing deficit of permitted use grazing capacity assigned to qualified base properties many years ago.

Forage for Wildlife

We recommend that in allocating forage for domestic livestock, forage necessary for support of wildlife in a particular area should be taken into consideration. Regulations under the Taylor Grazing Act provide for the allocation of a reasonable amount of forage to wildlife.[5] But there is no statutory provision requiring such allocation. The regulation is directed primarily to protecting big game. There are, however, other forms of wildlife which are subject to adverse competition from domestic livestock. Forage allocations are as appropriate to these species as to big game.

While forage consumption by wildlife can only be estimated, more specific statutory direction to consider all species in allocating forage would provide a basis for cooperation with state game and fish

[5] 43 C.F.R. § 4111.3–1 (1969).

officials in determining the amount of forage necessary to sustain game and the level of game harvest required to control the amount of game to be supported.

Because dependent base property and public grazing lands are so closely linked, removal of all requirements for obtaining and holding grazing permits would be undesirable. However, the system of keeping deficit records for unused grazing privileges is also undesirable.

The retention of existing eligibility requirements for the allocation of privileges up to the recent levels of forage use would not impair the rights of current users. Guidelines would be established to specify the obligations to present users. One way of doing this would be to set each present permittee's obligated use at the average level of actual use during the last 5-year period. Forage that became available beyond this level would be subject to allocation to new applicants.

Increases in forage production beyond the level of present actual use should be allocated through the operation of the market. This would add flexibility to the system of allocation, would benefit the general public as public landowners and consumers, and would encourage efficiency of operation by ranchers using public land grazing.

The principal requirement we propose would be operation of a bona fide ranch in the area in which the public lands are located. It is not proposed to bar presently qualified users from participating in allocation of the increased forage.

Since competition for grazing privileges, at least in some areas, would be limited, a minimum price should be established to protect the public interest.

Tenure

> Recommendation 40: Private grazing on public land should be pursuant to a permit that is issued for a fixed statutory term and spells out in detail the conditions and obligations of both the Federal Government and the permittee, including provisions for compensation for termination prior to the end of the term.

Under present law, grazing privileges are generally awarded under term permits or leases of specified duration. Grazing district permits issued under the Taylor Grazing Act may not exceed 10 years. A 10-year maximum primary term also has been established administratively for permits issued by the Forest Service and the National Park Service. Department of Defense agencies issue permits for 5 years, and the Bureau of Reclamation may issue 50-year permits, but does not do so in practice.[6]

In the case of permits within grazing districts under the Taylor Grazing Act, permittees have a statutory preference right of renewal over other applicants for grazing permits, although the granting of the renewal itself is discretionary.[7] Forest Service permits are granted administratively in a manner essentially the same as under the Taylor Grazing Act. In practice, grazing use of public lands is quite stable because permits are generally renewed unless there is another Federal use for the land, or the permit terms have been violated.

Downward adjustments in permitted use because of range conditions are provided for in most agency permits and, when range becomes badly deteriorated, the practice is to make such adjustments rather than to refuse to renew permits. Additionally, allocation of the available forage to another use, such as wildlife, may be made.

Permits may also be terminated for failure to comply with the terms of the permit. Most disturbing to permittees, however, is the fact that permits may be cancelled at any time if the land covered passes from the administrative control of the particular agency issuing the permit, as by withdrawal or exchange.

Permittees are not usually entitled to compensation for reduction of use or permit termination. There are limited exceptions to this. When the land is directed to use for defense projects, the loss of the permit may be compensated.[8] Also, when a permit is terminated, in some instances the permittee may be compensated for loss of improvements he has placed on the land.[9]

We recommend that the term of grazing permits should be established by statute. A fixed statutory permit term would give administering agencies some guidance as to planning land uses and providing for changes in use. Agencies would have to plan land use adjustments around times at which permits are terminated, rather than make decisions on a largely *ad hoc* basis. Permittees would have a greater assurance of use during the life of the permit and thus make more efficient use and improvement plans for the permitted lands. Assurance of tenure for a fixed period of time would also increase the permit value as security for operational and improvement loans.

We recommend also that grazing permits should detail with greater precision the range conditions which will trigger use changes (both increases and decreases). If the permit term is to be fixed by statute, then there must be assurance that the land will be properly used during the life of the permit.

[6] University of Idaho, *The Forage Resource*, Ch. II.
[7] 43 U.S.C. § 315b (1964).
[8] 43 U.S.C. § 315q (1964).
[9] 43 C.F.R. § 4115.2–5(a)(7)(i)

PRIVATE RANCHES DEPEND ON GRAZING USE OF PUBLIC LANDS FOR YEAR ROUND OPERATIONS

Forest Service BLM Privately Owned

Terms of permits now in use provide in broad language that use levels may be adjusted for "conservation and protection of the resource" or that they are subject to temporary adjustments to "protect and conserve the public lands affected." We view the absence of precise standards in these provisions as objectionable.

Lack of specific standards to determine the level of permitted use contributes to uncertainty in the conditions of the permittee's tenure. Furthermore, it generates disputes between the managing agencies and permittees.

Ranch operators have become better equipped technically in modern times to manage their own range. There is today a better understanding of the necessity for conserving the forage resources than existed before 1934. The range users have a vital personal interest in maintaining the resource at a high level of productivity.

It is desirable that permittees be given greater control and more flexibility over range use. If more precise standards of permitted use for the maintenance of range conditions are incorporated in permits, the objectives of more certainty in tenure and greater permittee control over range can be obtained.

The detailed unit management plans which have been in use by the Forest Service for some time, and are coming into increasing use by the Bureau of Land Management, provide much of the kind of specificity as to terms and conditions of use to which we refer. These plans attach to and are considered part of the grazing permit. According to information supplied by the administering agencies, this approach has led to greater mutual understanding of the responsibility of both the Government and the range user, and is contributing substantially to improved grazing use and range conditions.

We recommend furthermore that, whenever practicable, rangeland should be allocated on an area basis to a permittee, and he should be required to maintain a specific range condition regardless of the number of animals grazed. This would place the range management responsibility squarely with the permittee. No limits would be placed on the number of animals to be grazed, but the permittee would be required to maintain carefully specified range conditions. Failure to do so would subject the permittee to penalties, including possible cancellation of the permit.

While, under the Commission recommendations, if the permittee maintains proper range conditions he will not be limited in numbers of animals to be grazed, the administering agency should have the authority to lower the level of permitted use if range conditions fall below the level specified in the permit. This authority would be in addition to the right to cancel the permit under proper conditions. The agency would have the right also to increase permitted use, as conditions warrant, in areas where it has been lowered. This authority, however, should be granted only on condition that, to the extent practicable, the agency specify in detail those range conditions which will trigger a permitted use level change.

We recommend too, that the kind of public purposes for which a grazing permit may be cancelled should be identified in the permit. In present practice there appears to be an assumption that grazing has the lowest priority of use on public lands and may be displaced on the slightest pretext and wholly within agency discretion.

That there are land uses which may be incompatible with grazing and which may deserve a higher priority must be recognized. Not all of such uses will be easily anticipated or described. However, to the extent possible those uses which may require cancellation of the permit should be identified and set forth in the permit. Those which can be anticipated but not precisely defined should be described at least in general terms.

We believe that this requirement is essential even in those areas on which domestic livestock grazing is declared as a dominant use under a subsequent recommendation in this chapter. The very essence of our recommendations for classification and designations are not immutable.

We recommend that permittees should be compensated when permits are cancelled to satisfy other public uses. The Taylor Grazing Act requires a permittee to be compensated for his range improvements if the permitted land is allocated to another permittee.[10] Regulations under the Act also provide that an applicant for disposal of land covered by a permit may be required to compensate the permittee for permanent range improvements.[11]

If the curtailment or cancellation of any agency grazing permit is the result of dedication of the land to national defense purposes, the acquiring agency is required to determine an amount of compensation which is "fair and reasonable for the losses suffered" to be paid from funds appropriated for the defense project.[12] The practice under this requirement has been to allow severance damages related to permit value in addition to compensation for range improvements. This practice should be extended to permit losses occurring whenever the permitted lands are diverted to other public uses as well, including disposals to third parties.

Permit loss decreases base property value, and permits may be included with base property as loan security. The statutory and administrative practices

[10] 43 U.S.C. § 315c (1964).
[11] n. 9, supra.
[12] n. 8, supra.

Overgrazing benefits neither the livestock operator nor the public. The healthy range (above) contrasts starkly with the overgrazed range and eroded lands.

of the Government have contributed to the concept of "permit value," whether or not the permit has the attributes of a property right. Loss of the permit prior to its expiration, therefore, should be compensated for, and the compensation standard should take into consideration the value of the base property with and without the permit.

Grazing may be permitted as a secondary use in an area that has been classified for some other use as the dominant one in accordance with recommendations in the chapter Planning Future Public Land Use. Where that occurs, we would expect that the possibility of conflict between the dominant and secondary uses would be indicated as a cause for termination of the permit; but we would also expect that, in that particular instance, no compensation would be permitted. At the same time, we observe that the possibility of conflict in such a situation would be obvious and would influence the level of the fee to be paid for the grazing privilege as recommended in this chapter.

Investment in Range Improvement

Recommendation 41: Funds should be invested under statutory guidelines in deteriorated public grazing lands retained in Federal ownership to protect them against further deterioration and to rehabilitate them where possible. On all other retained grazing lands, investments to improve grazing should generally be controlled by economic guidelines promulgated under statutory requirements.

There is general statutory authority for the investment of funds for range improvement purposes on the public lands.[13] There are, however, no statutory guidelines for the allocation of such funds.

In the case of the rehabilitation of deteriorated or frail lands, investments are generally related to the restoration of the lands to a minimum condition to serve a conservation objective. Investment in higher quality lands is related to providing improved grazing conditions and increased level of use.

Investment policy criteria should be established by statute requiring that both land and investments be classified according to either of the objectives to be served.

The Federal Government has generally supplied funds for the restoration and rehabilitation of badly deteriorated public range lands. Improved forage production will rarely justify such expenditures at least until the condition of the range has been improved to the extent that the lands are no longer classed as deteriorated.

On the other lands, investments above the level required to restore and protect the resource are made with the objective of increasing the production of forage. But even on these lands, improved forage production will not always justify the investment if judged on economic grounds.

Use of economic guidelines for the allocation of investments aimed at increasing forage production will assure that available funds are used most profitably, and that available resources will be allocated to opportunities that are economically feasible.

We believe that procedures for financing investment in forage producing lands should be changed: range investments should be shared between the Federal Government and users on the basis of identifiable benefits to each.

There is no consistent policy governing public range improvement financing. Investment has been by the Government, the range user, or cooperative agreement involving both parties. The absence of a fixed policy leads to uncertainty over who should bear the cost and who owns the improvement. Understandably, users are reluctant to undertake improvements in the absence of assurance that they will be able to recover all or a part of their costs if the permit is terminated or cancelled.

An explicit determination of expected benefits from each investment should be made and costs should be allocated on that basis. To prevent double charging, the user should be credited for his investment as he pays his grazing fee. This cost sharing policy should be mandatory and applied in all cases to maintain equity among users and between users and the Federal Government.

Federal financing of investment in forage-producing lands should not be from earmarked receipts. The Commission opposes earmarking of public land receipts in most cases and sees no reason why an exception should be made in the case of investments in public grazing lands.[14] The existing range improvement funds that are made up of a portion of the receipts from grazing fees should be discontinued. Parenthetically we note that such funds have been inadequate, and further that the desirable level of investment is not necessarily related to fees collected. Federally financed investments should come wholly from the general fund of the United States.

[13] See 43 U.S.C. § 315i(b).

[14] For the Commission's general recommendation on earmarking, see Chapter Twenty, *Organization, Administration, and Budgeting Policy.*

Identification of Lands Valuable for Grazing

Recommendation 42: Public lands, including those in national forests and land utilization projects, should be reviewed and those chiefly valuable for the grazing of domestic livestock identified. Some such public lands should, when important public values will not be lost, be offered for sale at market value with grazing permittees given a preference to buy them. Domestic livestock grazing should be declared as the dominant use on retained lands where appropriate.

Although it is known that substantial portions of the public lands are chiefly, although not solely, valuable for the production of forage for domestic livestock, the extent of such lands is not known. These areas should be identified and at the same time other public values should be identified.

Modern land management methods, developed to prevent the recurrence of conditions which existed between 1900 and the 1930's, preclude the necessity for the Government to continue to control lands that are primarily valuable for grazing.

Disposal of those lands which are principally valuable for grazing would reduce Federal administrative costs. More importantly, it would place the management and use of the forage resource in the hands of those who normally manage productive resources in a free enterprise economy, and thus provide an incentive for the investment needed to make those lands fully productive. In private ownership, economic efficiency would tend to cause the lands to move into the hands of more efficient operators and thus lower the cost of livestock and improve the health of the industry.

The Commission's recommendation to dispose of lands chiefly valuable for grazing is qualified. Consideration must be given to the fact that the public forage lands are often productive of other values.

There is no good information available to define and identify that portion of the 273 million acres under grazing permit that are chiefly valuable for domestic livestock. Some of the grazing land has important watershed values. Wildlife and outdoor recreation are also important uses on parts of the public grazing land.

Therefore, some standards will have to be established to identify those grazing lands which are suitable for disposition. The basic criteria for classification should be that the lands be chiefly valuable for grazing livestock, that they have few or no other valuable uses which would not be equally, or as well, realized under private ownership, and that their disposition would not be likely to complicate unduly the management of retained public lands. In identifying those lands that are to be transferred to private ownership, no distinction should be made among unappropriated, unreserved public domain, Land Utilization Project lands, and Forest Service grazing lands.

Lands of substantial value for purposes other than grazing should be retained. In addition, if important values for public use would be lost, disposition should not be made as, for example, if disposition would result in inroads in a national forest that would increase the difficulty of administration of the forest.

As indicated earlier in this chapter, permit policies of both the Bureau of Land Management and the Forest Service favor the use of public range by established ranchers rather than itinerant operators. Permittees on both Forest Service and Bureau of Land Management lands are accorded a preference right of renewal. This, together with base property and commensurability requirements discussed previously for the issuance of permits, has generally resulted in stabilization of the patterns of ranching as related to public lands. Usually there is a natural relationship between the public land grazing allotment and the associated base property, and the value of each is dependent on the other.

To minimize the disruption of ranching operations which depend upon public land grazing allotments, holders of existing base properties should be given a preference right to purchase at the appraised full market value, when it is decided to dispose of grazing land for which the base property owner holds a permit. This right, which the rancher should be required to exercise within a reasonable period of time, would encourage the continuation of efficient ranching operations and honor the Government's longstanding commitments. Such a policy would also prevent the destruction of values of base properties.

Establishment of market value could be done either through appraisal or at public auction. The acceptable price should take into consideration any restrictions on the lands. Whatever method of sale is used, there should be provision for payment to be made over a period of time, if desired by the purchaser. *Reasonable rights to public access across lands that are disposed of should be retained by the Federal Government when necessary to make values on other public lands available to the using public.* While the retained easement must be for the benefit of the public, it should provide that the Government may control its use when necessary. Thus, if the public interest requires periodic closing of the access route, this could be accomplished by administrative action.

The rights to public access across those lands which are disposed of must be reasonable. They should not take the form of "floating" easements. Before the lands are sold, an examination of the

land should be made to determine which route is most feasible for an easement and least disruptive to the future use of the land by the purchaser. The easement should then be surveyed and precisely described in the instrument of transfer.

Lands disposed of for grazing purposes should be on conditions designed to minimize land speculation. Selling the lands at market value will not only help to assure that they are put to their highest and best use, it will also reduce speculation. However, additional measures should also be taken.

To some extent, the problem of speculative purchases will be alleviated by a careful selection of the lands that are designated for disposal. But if lands are identified for disposal because their chief value is grazing, then there should be some assurance that, for at least a reasonable period of time, they will be used for that purpose. *We, therefore, recommend the imposition of use restrictions which, if violated, could subject the title holder to injunctive action or to reversion of the title.* Thus, a use or threatened use of the land for a purpose other than grazing could be enjoined during a reasonable period of restriction. The land should not, however, be kept frozen forever in one use because changing conditions will demand different uses.

Grazing as a Dominant Use on Retained Lands

Few statutory guidelines exist for allocating public land resources between domestic livestock and other uses. Without such guidelines the range manager is hindered in fixing the limits of competing use. The result is that pressures, unrelated to the true capabilities of the land, may be the determining factors in allocation of the land.

This situation will be corrected, in our view, by classifying for grazing as the dominant use those lands retained in Federal ownership and identified as being chiefly valuable for grazing of domestic livestock. Classification of lands chiefly valuable for grazing as dominant grazing use areas does not mean that other uses would be eliminated. It would, however, give the land managers a more precise basis upon which to allocate the land resources among competing uses. If the accommodation of competing use requires reduction in grazing, the manager would have a more meaningful standard for determining the necessary adjustment. Furthermore, the classification would give the livestock industry assurance that the land would not be shifted to another use, at least until such time as there is a clear, technically supportable determination that the lands are no longer chiefly valuable for grazing.

Historically, all public lands which could be physically negotiated by livestock have been grazed. Lands with steep topography and unsuitable soils, as well as lands in delicate ecological balance have been subjected to such use. Failure to recognize the limitations imposed by nature on lands of this sort has caused extensive damage to property and other resources and has required massive expenditures for rehabilitation. The results have not been desirable for either the livestock operators or society.

Such frail and deteriorated lands should be identified, as well as those chiefly valuable for grazing. Once identified they should be classified as lands not suitable for grazing, and we recommend that grazing in such areas should be prohibited to the fullest extent practicable.

Control of Competing Uses

Recommendation 43: Control should be asserted over public access to and the use of retained public grazing lands for non grazing uses in order to avoid unreasonable interference with authorized livestock use.

The public lands are generally open to unrestricted public use. Many areas that are suitable for domestic livestock grazing are also capable of supporting other uses, and a portion of Federal investments in these lands goes to the benefit of non-grazing uses.

The degree of interference among competing uses varies. Much of the grazing land is unsuitable for any other use; some of it, however, is susceptible to mineral production and many areas support game and may be used for recreation. For example, of the total public land area which has been withdrawn or reserved for recreation purposes, grazing is permitted on approximately one-fourth of the area.

The use of forage resources on public land by wildlife species has increased sharply over the past few years. Game use on the national forests has in recent years surpassed the use made by domestic livestock, and the game use of lands managed by the Bureau of Land Management more than doubled between 1947 and 1967.

Pressures on public lands for non-grazing use have inevitably led to conflicts between permittees and other users. Wherever possible, a balance between competing uses of public lands which is fair to all users must be achieved.

Resolution of the conflict between grazing and other use will be largely dependent upon public understanding and acceptance of reasonable ground rules governing use. There are, for example, certain times, such as periods of drought, when unrestricted hunting or recreation use offers a real threat to the forage source. On the other hand, ranchers often close the permitted lands to such uses without legal authority.

The Federal agencies do not now have positive policies for conducting any effort in localities to make rules of use known to other users, or for arranging to see that the rules are understood and complied with. Congressional action should supply ground rules of use, together with the necessary authority for use regulation.

Pricing

> Recommendation 44: Fair market value, taking into consideration factors in each area of the lands involved, should be established by law as a basis for grazing fees.

Prior to 1905, as stated earlier, no charge was levied for livestock grazing on any of the public domain. After that, by administrative action, permits were required and fees levied for grazing on the national forests. These fees were nominal for many years, but in 1931 a scale of fees was established for each area, based upon charges for private lands adjusted for differing conditions. The fees were adjusted annually to reflect changes in beef cattle and lamb prices, and the system was applied through 1968.

Grazing on the unreserved public domain under the jurisdiction of the Department of the Interior continued free of charge until enactment of the Taylor Grazing Act which gave the Secretary authority to charge a "reasonable fee in each case to be fixed or determined from time to time." [15]

In administering the Taylor Act during its early years, grazing fees were not related to cost of administration. In 1947 the Act was amended to provide that in determining "reasonable" fees the Secretary must take into account the extent to which grazing districts yield public benefits over and above those accruing to the users of the forage resources for livestock purposes. Also, the Act provided that "such fees shall consist of a grazing fee for the use of the range, and a range improvement fee." [16]

It is clear that Congress assumed that the administrative costs would be used as a yardstick in fixing fees, and that the 1947 amendment to the Taylor Act was designed to assure that administrative costs were properly allocated between grazing and other purposes of the Taylor Act.

In administering the Taylor Grazing Act, the Department of the Interior has not interpreted the Act to be a revenue producing measure. This interpretation, which finds support in the legislative history of the Act, has been reflected in level of fee receipts. From 1947 to 1957, fees charged by the Bureau of Land Management increased from 5 cents per animal unit month to 15 cents by negotiation with the industry. Beginning in 1958 and continuing through 1968, fees were set in relation to the previous year's livestock prices. In 1968 the fee was 33 cents per animal unit month.

A study of user charges released by the Bureau of the Budget in 1964, recommended that an interagency group develop a uniform system for establishing grazing fees based on the economic value of the forage to the user. The group submitted a report in 1967 recommending a fee system which was adopted by the Forest Service and Bureau of Land Management in 1969. The system adopted provides for increasing grazing fees over a period of 10 years by annual increments to $1.23 per AUM.[17]

Over the years, attempts to establish fees for public land grazing have been fraught with confusion. The statutory mandate that fees be "reasonable," qualified by a direction to take into account "the extent to which districts yield public benefits over and above those accruing to the users" is largely responsible for this confusion.

Obviously, what might be considered as reasonable to non-users, may well seem unreasonable to grazing permittees. While some public benefits may be identified, they are not easily quantified, *i.e.,* translated into specific monetary terms. Furthermore, not all of these benefits are common to all grazing areas.

A proper statutory basis for grazing fees on land retained in Federal ownership would be "fair market value" and the Commission recommends the adoption of this standard. Fair market value, however, is only valid as a standard if it provides a measure of the value of what is sold to the purchaser who knowingly takes into account the advantages and disadvantages of product or services.

Fair market value for public land grazing is not necessarily the same as the value of private grazing land. It is the price which would be paid for public land grazing, given all of the advantages and disadvantages of grazing domestic livestock on the public lands. It is the value that ordinarily would be established by operation of the open market.

Application of a "fair market" value standard to grazing fees would protect the interest of the public as landlord. Equity to the users, however requires consideration of some qualifying factors in determining fair market values.

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[15] 43 U.S.C. § 315b (1964).

[16] Act of August 6, 1947, 61 Stat. 790.

[17] Commission staff, *User Fees and Charges for Public Lands and Resources,* Ch. IV. PLLRC Study Report, 1970. This report provides a detailed description of the procedures followed in establishing the new fee system. Implementation of the system announced in 1969 has been suspended for a period of 1 year pending the receipt of this Commission's report.

When market and other conditions in the vicinity of permitted lands are taken into consideration for each permit, grazing fees will vary based on conditions in each permit area. The fee schedules used for lands under the jurisdiction of the Bureau of Land Management have always been for a uniform, universal fee. The schedule adopted for public land grazing in 1969 was similarly a single fee for all lands.

It is unrealistic to charge the same fee without consideration of variances in operating and economic situations or differences in the quality of public range land and forage yield. The fallacy of the uniform, universal fee approach is even more evident if the fee schedule is truly designed to achieve comparability with private charges, which vary from locality to locality.

Forage in an arid or semiarid area simply is not worth as much as forage in a humid area of lush vegetation. This fact should be recognized and fee schedules should be varied accordingly.

We believe that an equitable allowance should be afforded to current permittees for permit values in establishing grazing fees. As a matter of law, public land grazing permittees do not acquire any right in the permitted land. Federal land management agencies have objected to any proposal to consider permit cost or value in fixing grazing fees which, they say, would thereby recognize an interest in the permitted land.

It is argued that, while permits are assigned a value in transfers of base properties and as loan collateral, these involve transactions between private parties not involving the Government.

As has been pointed out previously, the Government has contributed to the concept of permit-value in the administration of the statutory preference right of renewal, the payment of compensation upon permit termination for defense purposes, and statutory recognition of a right to include the permit as loan security. And, since a purchaser of base property can be almost certain that he will qualify for and be awarded the permit, it is only a technical question as to whether the permit is "sold."

The recommendations of this Commission, if adopted, will establish more stability of tenure for permittees. The permittee will obtain compensation when the permit is terminated by diversion of the permitted land to another Federal use. However, the value of permits in the market is affected by the fee rates which are charged for grazing on the permitted lands. An increase in grazing fees will tend to decrease the value of permits. As the cost of operating on the permitted land is increased by higher fees, the value of the permit to the operator will be correspondingly less. Accordingly, the overall value will become unimportant once an equitable adjustment has been made for current holders.

Recognition must also be given to the fact that a portion of the public land would be relatively worthless after the expiration of some period of time unless operated as a unit with base properties.

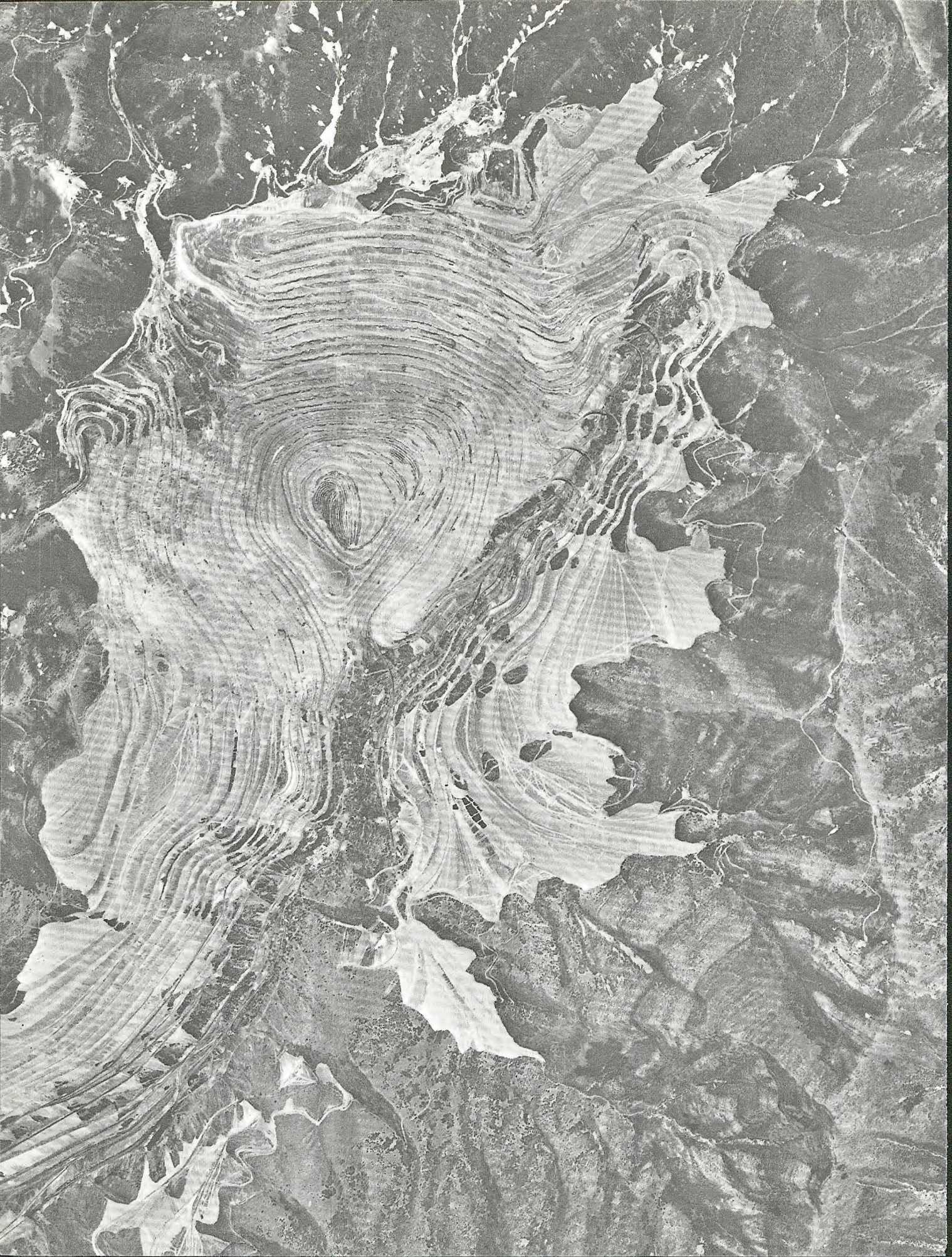
Uniformity of Policies

Recommendation 45: Policies applicable to the use of public lands for grazing purposes generally should be uniform for all classes of public lands.

There are significant differences in grazing policies employed by Federal land management agencies. Fee schedules vary, for example, as do methods of allocation and terms of permits or leases. These are differing policies within agencies for different classes of lands.

The use of different policy systems unnecessarily complicates administration. Ranchers who use more than one type of Federal land must adjust their operations to conform to different sets of rules.

While it may be necessary to vary permit requirements in some areas in which grazing is not a dominant use, such as in military installations, the policies applicable to public land grazing should be as uniform as possible in such matters as initial allocation, pricing systems, terms of permits or leases, compensation, investment, and financing.



Mineral Resources

OUR STANDARD of living and our national defense are heavily dependent upon the availability of fuel and nonfuel minerals. National requirements for these products are an essential factor in the development of a rational policy for mineral development on our public lands. While it is apparent that mineral development is important to regional growth and other factors, we have given primary weight to the overriding national requirements.

The fuel and nonfuel mineral industries have provided an ever larger proportion of the raw materials base of the American economy since the turn of the century. In that period of time they have increased until they represent at least one-third of the total value of all raw materials used in the United States.

To the total gross national product in 1966, fuel mineral production contributed $15 billion and nonfuel mineral production contributed $7.5 billion. In percentage terms mineral production is not a large part of our national income or employment. Nevertheless, the mineral industries require a much greater expenditure for capital and equipment than is needed for the manufacturing industries. In 1963 their capital expenditures amounted to 22 percent of the total for mineral and manufacturing industries even though the value added by the mineral industries was only 8 percent of the total.

Our industrial dependency on the production of fuel and nonfuel minerals is more significant than the substantial monetary values they contribute. Many of the factors we take for granted in our standard of living would be impossible without reliable and economic supplies of minerals.

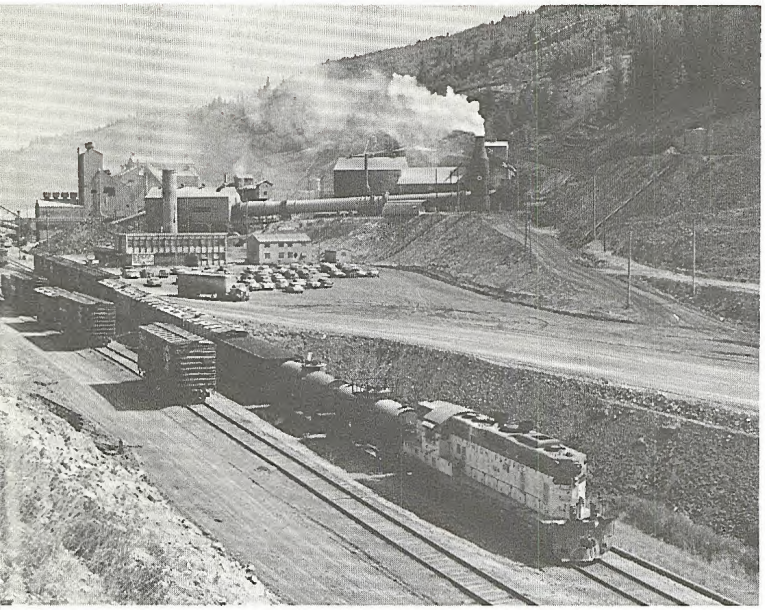
Likewise, our survival as a leading nation depends on our mineral supplies. The close relation between minerals and our national security is too apparent to require detailed explanation.

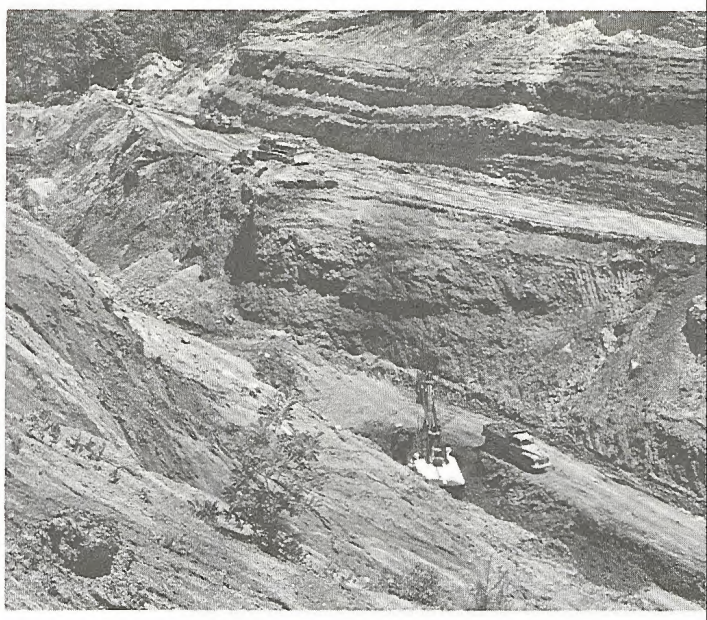
As our demands for minerals have grown, we have become more dependent on foreign sources of supply. Over one-third of our mineral supplies are imported. This reliance on foreign sources may well increase according to current indications. Experience in Peru, the Middle East, and elsewhere demonstrates that total reliance on foreign sources would be a hazardous economic and political policy. We strongly favor, therefore, an overriding national policy that encourages and supports the discovery and development of domestic sources of supply.

Public land mineral policy should encourage exploration, development, and production of minerals on the public lands. Oil production on Federal land (other than the Outer Continental Shelf) in 1968 amounted to between 6 percent and 7 percent of the national total and was valued at over $570 million. This figure does not include any production from the recent discoveries in Alaska which are not on Federal lands and are said to be the largest U.S. deposits since the East Texas fields. Perhaps of even more importance is the fact that large areas of the public lands not yet drilled are deemed favorable to the occurrence of oil and gas. Over 64 million acres of Federal land were under lease for oil and gas in 1968, of which over 90 percent was in the 11 western contiguous states and Alaska.

Substantial deposits of coal, phosphate, and sodium compounds are also known to exist in public land areas and some are under lease. Accurate data concerning production of the metallic and other minerals subject to claim location under the General Mining Law [1] are not available since there are no Federal records segregating production among private, state, and Federal lands. However, in 1965, the western public land states, in which over 90 percent of the public lands lie, produced over 90 percent of the Nation's domestic copper, 95 percent of the mercury and silver, 100 percent of the nickel, molybdenum, and potash, and about 50 percent of the lead. In fact, most of the known domestic resources of metallic minerals other than iron are situated in the West.

[1] 30 U.S.C. §§ 22 et seq. (1964).





Present knowledge about the geology of mineralization in the United States, combined with the geographic pattern of established mining districts, indicates a strong probability that the public land areas of the West generally hold greater promise for future mineral discoveries than any other region.

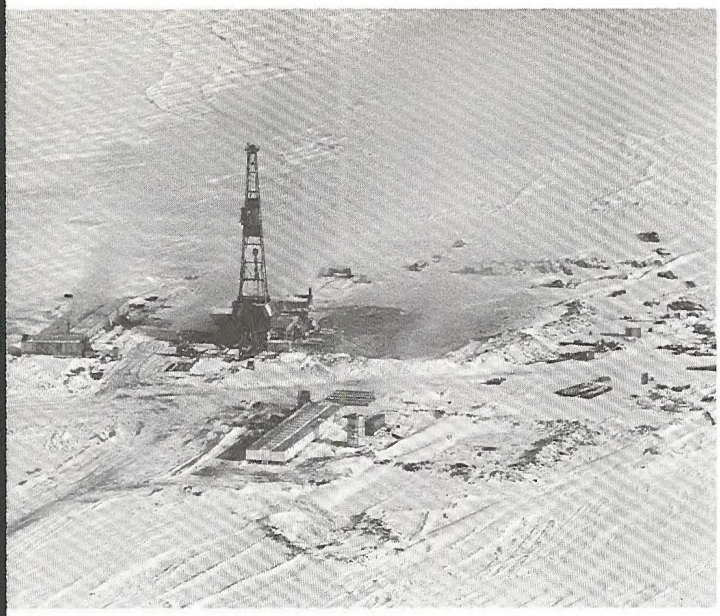
Consequently, we have concluded that it is in the public interest to acknowledge and recognize the importance of mineral exploration and development in public land legislation. Also, a decision to exclude mineral activity from any public land area should never be made casually or without adequate information concerning the mineral potential.

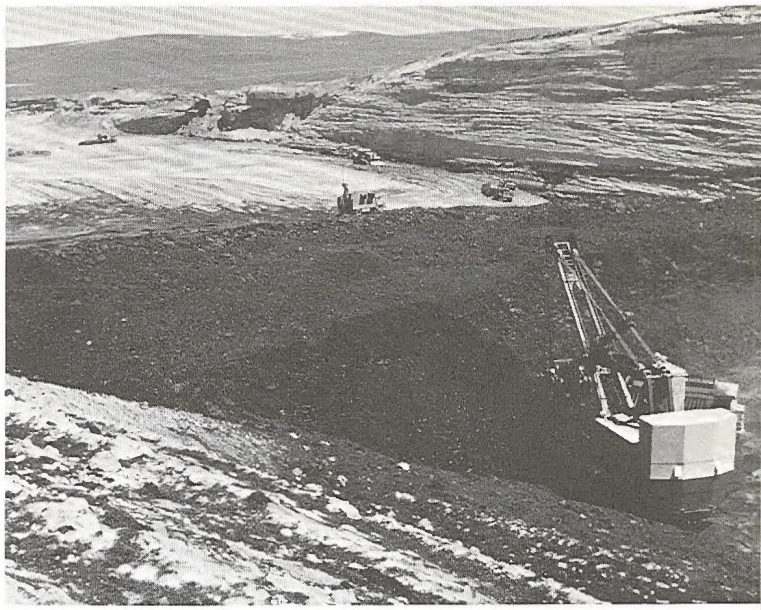
Mineral exploration and development should have a preference over some or all other uses on much of our public lands. As a land use, mineral production has several distinctive characteristics. Mineral deposits of economic value are relatively rare and, therefore, there is little opportunity to choose between available sites for mineral production, as there often is in allocating land for other types of use. Also, development of a productive mineral deposit is ordinarily the highest economic use of land.

While mineral exploration activities are conducted over substantial areas of land, experience has demonstrated that mineral production requires less surface area than most other land uses. For example, in 1966 Arizona was the western state in which mining was conducted over the largest area. Nevertheless, only 0.13 of one percent of the state's area was actually used for this purpose. Therefore, a use preference is warranted by nature's sparse and random distribution of valuable mineral deposits and the vital relationship between our national welfare and assured supplies of minerals. Furthermore, a worthwhile mineral deposit is usually concealed and becomes available to meet our national needs only as the result of an expensive, long-term and high risk search effort.

The Federal Government generally should rely on the private sector for mineral exploration, development, and production by maintaining a continuing invitation to explore for and develop minerals on the public lands. We are satisfied that private enterprise has succeeded well in meeting our national mineral needs, and we see no reason to change this traditional policy. Existing Federal programs to develop nationwide geological information should be continued and strengthened. These Federal programs should serve to identify general areas favorable to mineral occurrence with detailed exploration and development left to private enterprise. The efforts of private enterprise will be effective only if Federal policy, law, and administrative practices provide a continuing invitation to explore and develop minerals on public lands.

Even though we are concerned about various impacts on the environment, and make recommendations in this report for the strengthening of the Federal Government's authority to regulate such impacts, we recognize that mineral exploration, development, and production will, in most cases, have an impact on the environment, or be incompatible with some other uses. By its very nature, mineral activity alters the natural environment to some degree, and if no such impact were to be tolerated, it would be necessary to prohibit the activity. Mineral exploration, development, and production are essential to our na-





Fuel and nonfuel mineral industries are responsible for one-third of the total raw material value produced in the United States each year.

tional economic and strategic well-being, however, and such activities cannot be barred completely.

Accordingly, our emphasis must be on minimizing impacts. These impacts range from tracks left by exploration vehicles to large production pits. Because of the national requirement for the development of domestic mineral sources, development will frequently have to proceed, subject to reasonable controls designed to lessen the adverse impacts, even though those impacts exist. Stated another way, we believe that the environment must be given consideration, but regulations must not be arbitrarily applied if the national importance of the minerals is properly weighed.

Exclusion from Development

Recommendation 46: Congress should continue to exclude some classes of public lands from future mineral development.

With few exceptions, mineral leasing and mining laws do not apply in national parks and monuments. Certain other specific exclusions are contained in various laws. We do not favor opening these areas to mineral development, and we recognize that other similar areas should be and no doubt will be established which have such unique public values that it would not be in the national interest to permit such operations.

In connection with consideration of statutory exclusion of mineral activity from designated public land areas, Federal agencies should make mineral examinations which will provide reliable information concerning their mineralization. Too often in the past exclusions have been accomplished with little or no knowledge of mineral values. *Since it is often essential to act promptly in deciding whether mineral activity should be excluded, we urge dispatch in making these mineral surveys before an urgent situation arises. This will permit not only more efficient and more economical action, but reviews that can be accomplished carefully without jeopardizing the environment.*

We also urge the establishment of a program to determine the extent of mineralization of public land areas where mineral activities are presently excluded but mineralization appears to be likely. In most cases, this type of mineral survey can be executed with modern geochemical and geophysical techniques so as not to interfere with other uses of these areas. Even though we oppose opening these areas to development, the resulting information would be of substantial value for the identification of standby reserves that might be needed in national emergencies. It would also advance the knowledge of geology in regions where these areas are located. Any such program would be of a long-range nature, and areas created by administrative action should be examined first consistently with our recommendations for review of withdrawals and reservations.

We recognize that the Federal Government in most cases would have to assume financial responsibility for these mineral surveys, since private enterprise

without assurance of development rights will not have the incentive to finance such surveys. However, it would be feasible to contract for services of this kind to be performed under close supervision of the management agency.

Modification of Existing System

Recommendation 47: Existing Federal systems for exploration, development, and production of mineral resources on the public lands should be modified.

There are three distinctly different existing policy systems providing for the exploration, development, and production of minerals on the public lands. The first came into being under regulations established by miners in the western mining districts before any Federal law had been enacted. These rules were subsequently embodied in the General Mining Law of 1872.[2]

Under the General Mining Law locators are able to initiate rights to public land mineral deposits merely by discovery and without prior administrative approval if the lands have not been closed to mineral location by withdrawal, reservation, or segregation. Where the deposits are valuable, the locator may acquire legal title to the land within his claim or claims through issuance of a Federal deed known as a "patent" upon payment of a nominal sum. Even without a patent a locator may produce minerals without any payment in the form of a royalty or otherwise. This system generally applies to the metallic or hardrock minerals.

The second system as it exists today was established in 1920 when specific minerals were removed from the General Mining Law's coverage and placed under a leasing system.[3] Leasing acts generally require annual rentals until production and the payment of royalties thereafter. Nearly all public lands may be leased for those minerals coming under a leasing system, but the responsible administrators have complete discretion to accept or reject offers to lease, and large areas have been closed to leasing. Noncompetitive oil and gas leases and prospecting permits for other leasable minerals are available on a first-come, first-served basis, except in certain situations in which oil and gas leases are awarded in a drawing procedure. Competitive oil and gas leasing only applies where the area is within the known geologic structure of a producing oil or gas field. With respect to other leasable minerals, workable deposits are leased on a competitive-bid basis. Furthermore, operations under a mineral leasing system are subject to detailed regulation over all operations of the lessees.

The third system, the materials disposal system, came into being in recent years to provide for the sale of specific common commodities. This system is authorized in the Materials Act[4] and involves a rather simple procedure in making available common materials (such as sand and gravel) at a market price usually determined by competitive bidding.

Under the leasing systems and the Materials Act, administrative permits are required prior to any exploration activity.

Some of these systems are applicable to some lands and not to others. For example, the General Mining Law is not applicable to acquired land or public domain land in 5 midwestern states.[5] *We believe that Federal mineral legislation, if our recommendations are adopted, should be equally applicable to all federally owned land where the type of mineral activity involved is permitted by law.*

The Location-Patent System

The General Mining Law of 1872[6] has been abused, but even without that abuse, it has many deficiencies. Individuals whose primary interest is not in mineral development and production have attempted, under the guise of that law, to obtain use of public lands for various other purposes. The 1872 law offers no means by which the Government can effectively control environmental impacts. Other deficiencies include the fact that claims long since dormant remain as clouds-on-title, and land managers do not know where claims are located.

For all of these reasons, some have advocated the replacement of the existing system by leasing, the only other system now in effect for the exploration, development, and production of major minerals.

In addition to the general deficiencies of the Mining Law, there are other weaknesses from the standpoint of the using industry in that there is (1) no certainty of tenure before meeting the qualifications for a discovery of a deposit, even though large expenditures are involved in exploration and development before the discovery can be proved; (2) no certainty at this time as to what constitutes a discovery; and (3) inadequate provision for the acquisition of land for related purposes such as locating a mill. *For these reasons, and because operators believe they must continue to obtain title to mineral deposits even if not the surface of the land, the industry generally prefers amending rather than replacing the 1872 Mining Law.*

We see merit in both of the positions—maintenance of the location-patent system and a leasing

[2] *Ibid.*

[3] The reference is to the Mineral Leasing Act, 30 U.S.C. §§ 181 et seq. (1964).

[4] 30 U.S.C. §§ 601–603. (1964).

[5] Kansas, Minnesota, Missouri, Nebraska, and Wisconsin.

[6] n. 1, supra.

Minerals are where you find them. The importance of minerals to the national economy calls for a public land policy that encourages the search for new deposits.

system—but believe that a system should be established that incorporates the desirable features of both.

Public Lands Open to Prospecting

The public interest requires that individuals be encouraged—not merely permitted—to look for minerals on the public lands. The traditional right to self-initiation of a claim to a deposit of valuable minerals must be preserved. This does not weaken or dilute our concern for protection of the environment or other public land values, because we believe that we have other means with which to safeguard the environment against major adverse impacts.

Unless a public land area is closed to all mineral activity, *we believe that all public lands should be*

open without charge for nonexclusive exploration which does not require significant surface disturbance. However, we also conclude that different conditions should prevail if the prospector desires an exclusive right, or if heavy equipment is to be used that will result in significant disturbances of the surface.

Perfecting A Claim

Recommendation 48: Whether a prospector has done preliminary exploration work or not, he should, by giving written notice to the appropriate Federal land management agency, obtain an exclusive right to explore a claim of sufficient size to permit the use of advanced methods of exploration. As a means of assuring exploration, reasonable rentals should be charged for such claims, but actual expenditures for exploration and development work should be credited against the rentals.

Upon receipt of the notice of location, a permit should be issued to the claimholder, including measures specifically authorized by statute necessary to maintain the quality of the environment, together with the type of rehabilitation that is required.

When the claimholder is satisfied that he has discovered a commercially mineable deposit, he should obtain firm development and production rights by entering into a contract with the United States to satisfy specified work or investment requirements over a reasonable period of time.

When a claimholder begins to produce and market minerals, he should have the right to obtain a patent only to the mineral deposit, along with the right to utilize surface for production. He should have the option of acquiring title or lease to surface upon payment of market value.

Patent fees should be increased and equitable royalties should be paid to the United States on all minerals produced and marketed whether before or after patent.

As indicated above, the General Mining Law provides inadequate protection to the explorer until he has made a discovery of a valuable mineral deposit. Throughout his prediscovery prospecting effort, he is subject to adverse actions by Federal land managers allocating the land for other uses such as withdrawals from mineral entry for an administrative site. With regard to third parties, he is protected only to the extent that he can prove the area was in his actual possession, which may be difficult under prevailing legal concepts.[7] This approach is inadequate for a typical exploration effort today because an area large enough to warrant the expenditures for modern technological methods will nearly always be much larger than that which can be held effectively in actual possession. As we have noted, Federal policy should invite mineral exploration in order to encourage future mineral discoveries.

Unlike the present Mining Law, claims should conform to public land subdivisions in all cases. In many cases, mining claim descriptions under existing law are totally inadequate to permit Federal agencies or other interested persons to find them on the ground.

The locator of a mining claim on public land records his claim under state law, usually with a county recorder. Federal land agencies often have no knowledge of his activities unless he applies for a patent. In our view, this is not consistent with sound land management. We do not favor any change in the title consequences which flow from recordation under state law. *However, we do recommend that locators be required to give written notice of their claims to the appropriate Federal land agency within a reasonable time after location.* This ordinarily could be accomplished simply by mailing a copy of the documents filed with the county recorder.

So-called assessment or performance work is required under present law only to prevent third parties from preempting a claim and to obtain a patent.[8] *To prevent speculation and assure diligent effort, an explorer should be required to pay rental, subject to offsetting credits for the actual performance work completed.*

Terms of Exploration Permit

Congress should: (a) establish the maximum size of an individual exclusive exploration right and the aggregate acreage held by one person; (b) specify the period of time for which that exploration right is granted; and (c) establish performance requirements designed to assure diligent exploration as a condition of retaining or renewing the exploration right.

Maximum sizes for claims and other holdings will avoid monopolistic tendencies in the operation of this system.

If exclusive rights are to be conferred on prospectors, restrictions designed to assure maximum ex-

[7] For a discussion of prediscovery rights, the doctrine of "discovery," and possessory rights of mining claim locators, see University of Arizona and Twitty, Sievwright & Mills, *Nonfuel Minerals.* PLLRC Study Report, 1970. Vol. II, Chapters 8–14.

[8] See 30 U.S.C. § 28 (1964).

ploration activity should be imposed. Performance requirements could be some combination of time limits, rentals, or work similar to the present Mining Law assessment provision.[9] These requirements would be made conditions of retaining an exploration right during its term or renewing or extending it upon expiration of its initial term. Strict conditions for the renewal or extension of the primary term would also stimulate diligent activity.

There should not be any distinction between lode and placer claims, and no extralateral rights to minerals outside of claim boundaries should be acquired.[10] The reasons for these provisions no longer exist, and the resulting legal uncertainties discourage sound mineral development. The only rationale for these provisions today would be the inadequacy of the 20-acre claim limitation, and our recommendation to provide for exploration claims large enough for modern techniques solves this problem.

Similarly, periodic written notice to Federal and county officials of compliance with performance obligations owed to the United States should be required as a condition to validity of each mining claim.

Protecting the Environment

While the Federal Government today retains the right to manage surface values on unpatented mining claims to the extent the locator does not need them in his bona fide mineral efforts,[11] there are presently no adequate regulations defining the relative rights of the Federal Government and the locator. Furthermore, it is questionable whether such regulations could be adequately enforced, since present law does not require written notice of claim locations to land management agencies.

In our view, this situation is not consistent with reasonable measures to protect surface values, or to maintain environmental quality in the vicinity of such claims. *Upon receipt of the required notice of location, a permit should be issued to the locator, subject to administrative discretion exercised within strict limits of congressional guidelines, for the protection of surface values. While an administrator should have no discretion to withhold a permit, he should have the authority to vary these restrictions to meet local conditions. It is our view that protection of environmental values must cover all phases of mineral activity from exploration, through development and production, to reasonable postmining rehabilitation.* The conditions to be included in permits and other instruments later in the process, except as necessary to accommodate circumstances in a particular locality, should have been established through the formal rulemaking procedure we recommend in the chapter on Administrative Procedures.

We recognize that the on and offsite impacts of mineral operations vary widely according to soil type, drainage relief, topography, rainfall, temperature, seasons, vegetative cover, weather pattern, and proximity of population and travel routes. Because of these differences, flexibility is indispensable to sound administration in these matters; but their discretion should be limited by congressional guidelines.

Where mineral activities cause a disturbance of public land, Congress should require that the land be restored or rehabilitated after a determination of feasibility based on a careful balancing of the economic costs, the extent of the environmental impacts, and the availability of adequate technology for the type of restoration, rehabilitation, or reclamation proposed. Rehabilitation does not necessarily mean restoration, but rather the maximum feasible effort to bring the land into harmony with the surrounding area.

Up to the time commercial production commences, exploration, development, and production plans should be reviewed by the land managing agency for consideration of environmental factors, but administrators should be required to approve or disapprove the plans within a reasonable time. Plans of this kind must be submitted before the development and production of certain minerals under the existing leasing systems, and we believe it is in the public interest to require a similar procedure for locatable minerals. Essentially, this recommendation would merely formalize the voluntary process already employed by some mining companies.[12] Under the principles of our recommendations in Chapter Sixteen, adverse determinations would be subject to judicial review.

Development and Production Rights

Under the existing Mining Law, there has been substantial litigation over the legal requirements for the discovery of valuable minerals. In view of recent judicial and administrative rulings, a mineral ex-

[9] *Ibid.*

[10] A lode claim under the Mining Law of 1872 is required generally where a mineral deposit is held in place by rock in a fashion which permits reasonably distinct identification of its boundaries. A placer claim is any other claim made under the act, but is generally applied to diffused or broken mineral deposits.

For a discussion of the distinction between lode and placer claims see University of Arizona and Twitty, Sievwright & Mills, *Nonfuel Minerals.* PLLRC Study Report, 1970, Chapter 8. For a discussion of extralateral rights see Chapter 12, B, 2 of the same study.

[11] 30 U.S.C. § 612(b) (1964).

[12] See Rocky Mountain Center on Environment, *Environmental Problems on the Public Land,* case study No. 3. PLLRC Study Report, 1970.

plorer has little assurance that his rights to develop minerals will be secure even after he is satisfied that his discovery will support an economically feasible operation. If he must satisfy the legal test of current marketability at a profit,[13] he is then faced with the uncertainties of the cyclical price patterns for minerals, particularly since he cannot control the timing for consideration of his application for patent. If prices are low, there is increased risk that his claim will be held invalid.

To us it seems clear that Federal land agencies are poorly equipped to judge what is a prudent mining investment, and this issue should be closed when the mineral explorer is prepared to commit himself by contract to expend substantial effort and funds in the development of a mineral property.

The review of development plans at this, as well as at other stages, would be the responsibility of trained technical personnel of the United States Geological Survey. That staff performs this function in connection with other minerals at the present time.

Development and production rights should extend to the area necessary for production of the mineral discovery. These rights should embrace use of enough land to meet all reasonable requirements for a mineral operation, such as settling ponds, mills, tailings deposits, etc. Present law allows only 5 acres for each millsite in addition to the actual claim acreages,[14] and this clearly has been inadequate in many cases.

Patent to Minerals Only

Under present law locators may obtain a patent to the mineral lands—both surface and subsurface.[15] The payment of the current fee of $2.50 per acre for placer claims and $5.00 per acre for lode claims is merely nominal and does not justify sale of fee title which may carry valuable surface rights. We recognize that the patent system has provided security of title and has provided an incentive to search for concealed minerals on the public domain. To avoid windfalls and to prevent misuse of the mining laws for nonmineral purposes, we propose that a mineral patent should carry only a right to use the surface necessary for the extraction and processing of the minerals to which patent has been granted.

Market Value for the Surface

Mineral operators, however, should have the option of acquiring title or a lease to the needed land areas when they are willing to pay the market value of the surface rights. We recognize that there may well be circumstances in which the required investment would be so large that business judgment would dictate the need for fee title. In some cases, a lease may be preferred for that purpose, particularly if it is only necessary to permit more extensive use of the land than is conferred by the mineral patent alone.

If the mineral patentee does not acquire title to the surface, the right to the mineral interest should terminate automatically at the end of a reasonable period after cessation of production. It is apparent that a patentee who owns only a mineral interest has no incentive to manage or improve the land when mineral production is no longer attractive to him. These inactive properties are particularly troublesome when they are isolated tracts within a land management area. Such a provision would also encourage more complete use of the mineral deposit and discourage merely speculative holding of such areas.

Payment of Royalties

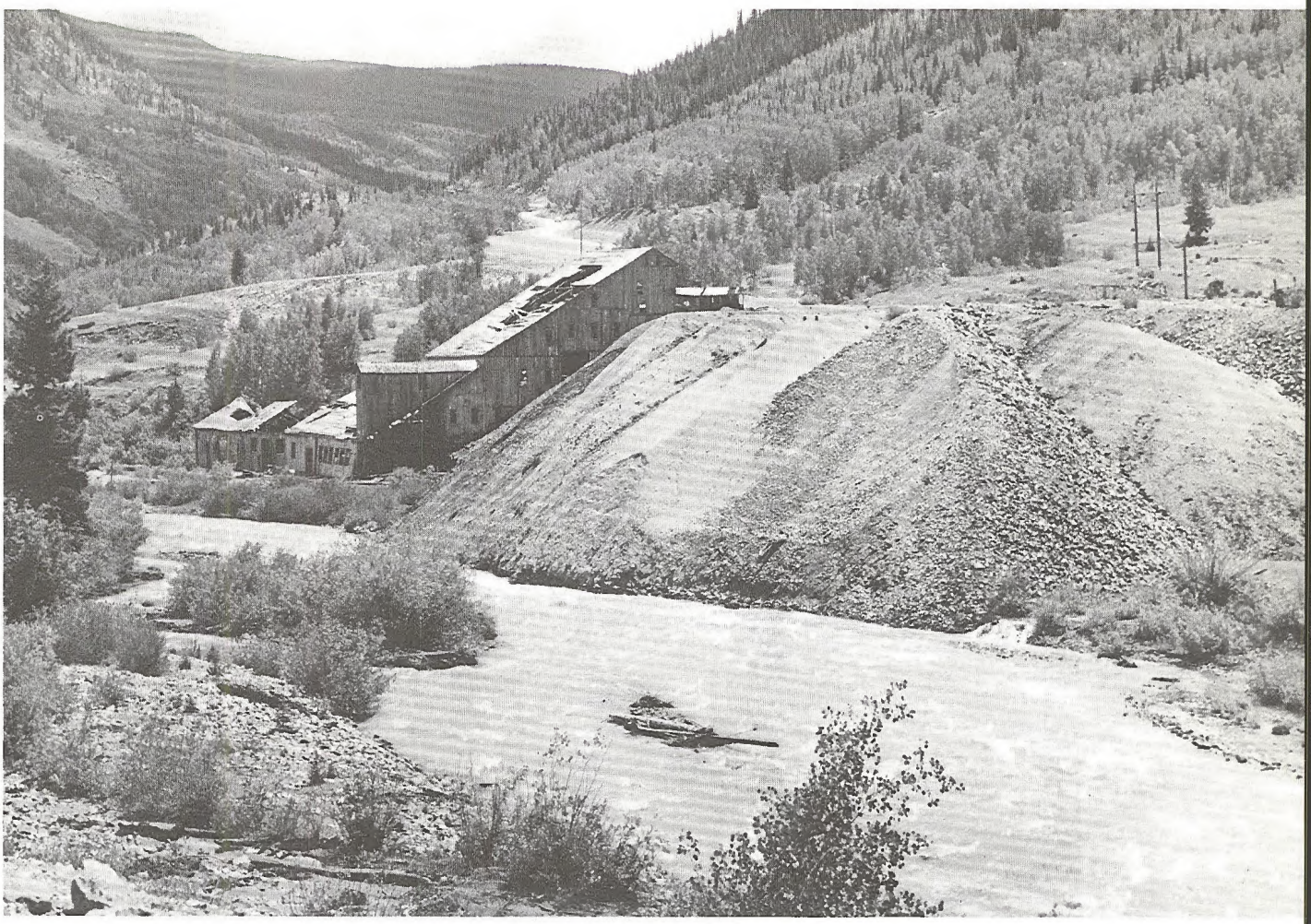
As stated above, the only payment made under the General Mining Law is a nominal fee for obtaining patent for mineral lands.[16] The holder of a mining claim may extract and market the minerals without payment for any portion of their value both before and after patent.

Throughout this report we consistently recommend that every user of the public lands should pay for his right or privilege. As a general standard we recommend fair-market value, unless Congress expressly establishes another guideline for payment. We perceive no reason why those producing minerals from the public lands should not likewise pay a fair value in relation to the product they obtain and market.

We note that payment to the United States is now required for minerals obtained from the public lands under the mineral leasing acts [17] and the Materials Act.[18] Pricing under those acts has been generally accepted and is comparable to prices paid for the same minerals to non-Federal public, as well as private, landowners.

The mining industry usually pays for hard rock minerals taken from private lands and non-Federal public lands either through a royalty or a lump sum payment. The royalty payment, through which a payment is required only on the values produced, is considered by us to be equitable to both the producer and the Government. *We believe that royalty should be collected on production both before and after patent.*

[13] See United States v. Coleman, 390 U. S. 599 (1968).
[14] 30 U.S.C. § 42 (1964).
[15] 30 U.S.C. §§ 29 and 37 (1964).
[16] *Ibid.*
[17] n. 3, supra.
[18] n. 4, supra.



Leaching of minerals and siltation from mine tailings cause serious pollution problems.

The proportion of value should be comparable, but not necessarily equal, to rates being paid to other landowners for the same mineral ore in the region. In suggesting the establishment of this market test, we recognize that royalties on the minerals involved are rather modest and will not be a major source of revenue. Minerals covered at the present time by the 1872 law are, under another law, leased on national forest acquired lands,[19] where experience supports our conclusion that royalties will be modest if they are based on comparable private land transactions. In any event, Congress should specify such royalties at levels that will provide a continuing incentive for mineral exploration, development, and production on public lands.

As we envision the system that we recommend, the United States would reserve a royalty interest in minerals in the development contract, and would then perpetuate it in the patent. In either event, the royalty would be paid only on minerals produced, and not on ore in the ground.

As we have indicated previously, we believe present patent fees to be inadequate. We do not consider charges for mineral patents to be a suitable vehicle for capturing the economic value of mineral deposits, and we do recognize the incentive value of reasonable charges based on the national importance of discovering mineral deposits in our vast public land regions. *Nevertheless, we believe mineral patent fees should be increased at least enough to cover administrative costs associated with the issuance of patents.*

Uniform Federal Requirements

Locators should not be required to comply with state laws relating to the location and maintenance of valid mining claims other than those provisions

[19] Reorganization Plan No. 3, July 16, 1946, 5 U.S.C.A. Appendix, A-188.

requiring recordation. The General Mining Law [20] currently requires compliance with location and discovery requirements of state law. State laws on this subject vary widely and many are obsolete or archaic in light of modern technology. The discovery work required by state law often serves no useful purpose and frequently conflicts with sound land use practices and causes needless harm to the environment. The Constitution gives Congress [21] the basic responsibility for determining the disposition of public lands, and we believe that the development of mineral resources is so important that Federal statutes should fully prescribe uniform methods by which rights in these resources may be acquired.

Elimination of Long-Dormant Claims

Congress should establish a fair notice procedure (a) to clear the public lands of long-dormant mining claims, and (b) to provide the holders of existing mining claims an option to perfect their claims under the revised location provisions we recommend. Under such a procedure, failure to file proper notice of preexisting claims with county and Federal agencies within a reasonable time would constitute conclusive evidence of abandonment. This would be somewhat analogous to state quiet-title actions and to the surface right proceedings authorized by the Surface Use Act of 1955.[22] Clearing the record of an estimated 5.5 million long-dormant claims would assist in achieving more efficient land planning and management by Federal agencies. We also believe that bona fide mineral explorers would often benefit from the prediscovery protection afforded under the procedures we recommend, which is lacking under existing law.

Conclusion

The location-patent system we recommend will, in our opinion, correct the deficiencies and weaknesses of the existing Mining Law while, at the same time, continuing to provide incentive for the exploration, development, and production of valuable minerals.*

[20] n. 1, supra.
[21] Article IV, section 3, Constitution of the United States.
[22] 30 U.S.C. §§ 611–615 (1964).

The Mineral Leasing System

A number of statutes provide for mineral leases applicable to certain minerals and to certain of the public lands. The principal leasing law is the Mineral Leasing Act of 1920 [23] which applies to oil, gas, oil shale, phosphate, sulfur (in two states), potassium, sodium, native asphalt, and solid and semisolid bitumen and bituminous rock (such as tar sands), where found on public domain lands. The Acquired Lands Leasing Act of 1947 [24] extended the 1920 Act authority to acquired lands. Various other authorities for leasing of locatable minerals on most acquired lands were centralized for administration in the Secretary of the Interior by the Reorganization Plan No. 3 of 1946.[25]

Under the leasing system, a distinction is made between areas where workable deposits of minerals are known or judged to exist and areas where workable deposits are not judged to exist. Where minerals are known to exist in workable deposits, leasing is done on a competitive basis with interested parties bidding competitively for the right to develop minerals. For example, in the case of oil and gas, leases are awarded competitively in those limited instances when a geologic structure of a producing oil or gas field is known to exist. Other minerals are leased competitively when the area is judged to contain "workable" deposits.

Noncompetitive leasing is used in all cases where competitive leasing does not apply. In the case of oil and gas, noncompetitive leases are awarded to the "first qualified applicant" who applies except in limited cases where substantial interest is involved. In the latter cases, all persons applying within a specified period are treated as having filed simultaneously and the lease is awarded by a public drawing. In the case of the other leasable minerals, prospecting permits are awarded to applicants solely on a "first come, first served" basis. These prospecting permits carry rights to lease the mineral once a discovery has been made. No bonus is paid for the prospecting permit, but an annual rental is charged

[23] n. 3, supra.
[24] 30 U.S.C. §§ 351–359 (1964).
[25] n. 19, supra.

* Commissioners Clark, Goddard, Hoff, and Udall submit the following separate views: The Commission is unanimous in agreeing that existing mineral law should be modified. Many excellent changes are recommended in this report. However, it is our view that more fundamental changes are required. In particular, the dichotomous system that distinguishes "locatable" from "leaseable" minerals should not be continued.

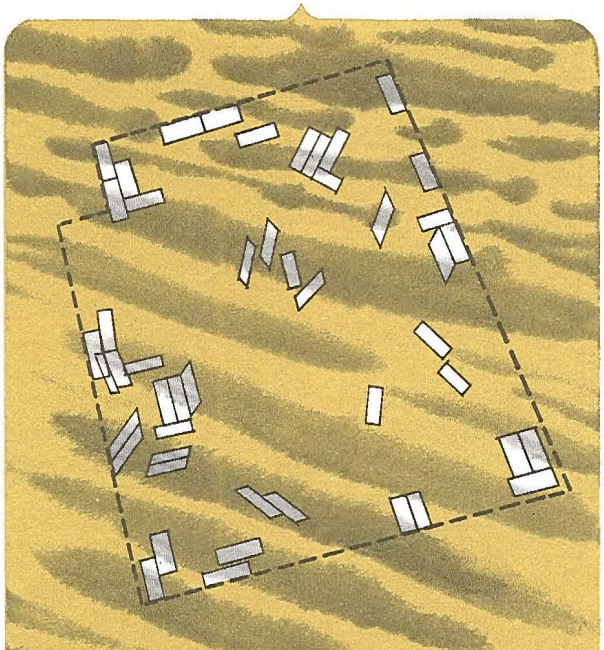
The recommended modifications preserve the location-patent approach devised more than 100 years ago. It served an earlier period but cannot, even as modified, provide an adequate legal framework for the future. Only minor surgery on the Law of 1872 is recommended in this report. In our view a general leasing system for all minerals except those which are made available by law for outright sale should be adopted. Such a system would:

1. Continue to encourage orderly and needed resource exploration and development.
2. Insure better management and protection of all public land values and enhance human and environmental values.
3. Establish a fair and workable relationship between economic incentives and the public interest.

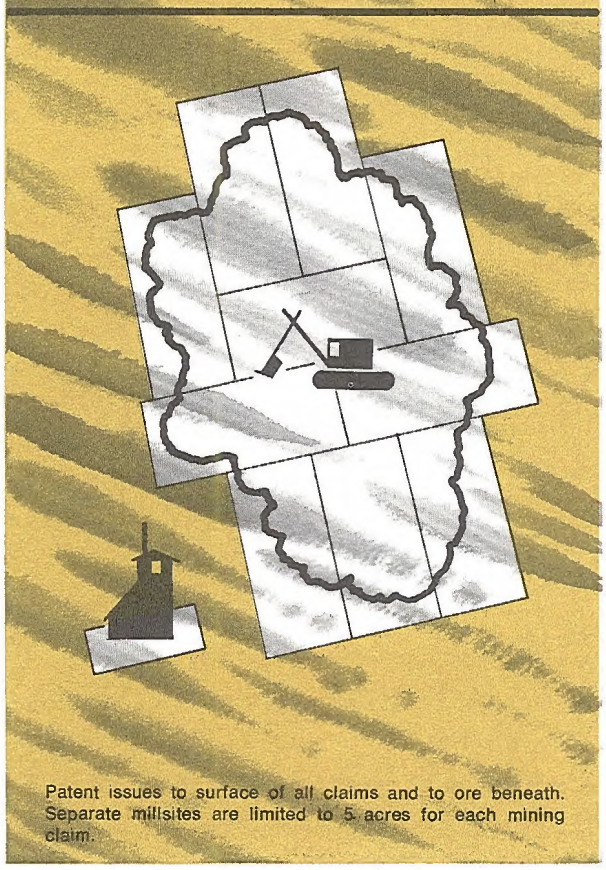
Objections to the location-patent system are numerous, obvious and, in large measure, admitted by industry and

MINING LOCATION PATENT SYSTEMS

PRESENT

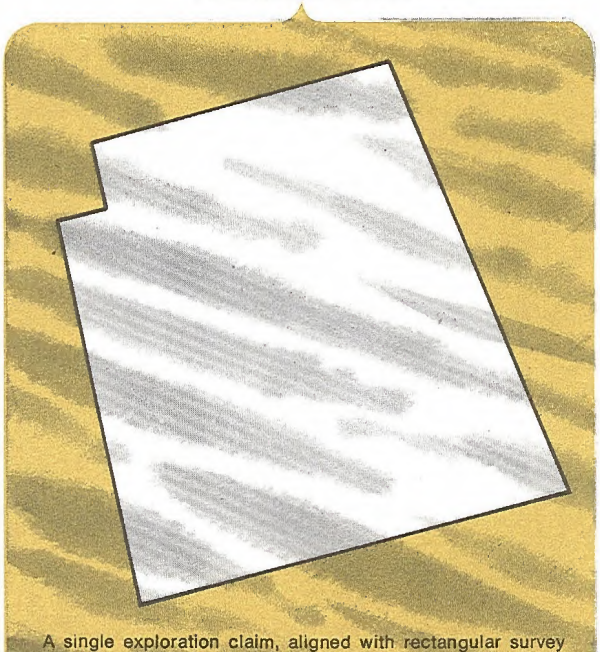


Sufficient 20 acre claims must be located to cover area being explored. No control over impact on environment.

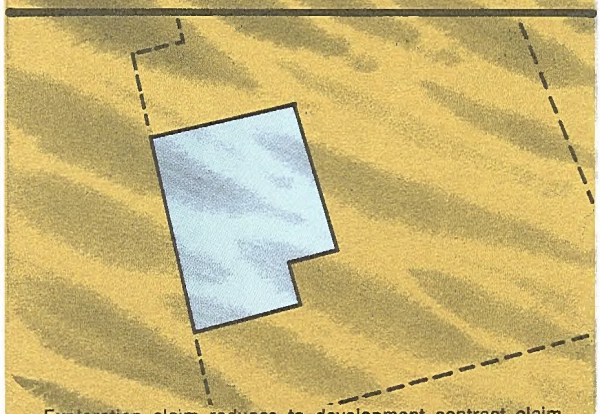


Patent issues to surface of all claims and to ore beneath. Separate millsites are limited to 5 acres for each mining claim.

RECOMMENDED



A single exploration claim, aligned with rectangular survey systems, could cover 5,000 acres or more. Environmental impacts controlled.



Exploration claim reduces to development contract claim.

Patent issues to ore body with right to use sufficient surface for mining, including millsite and tailings area.

and royalties are paid once a lease has been issued and is producing.[26]

Not only does the administrator have broad discretion to refuse to issue prospecting permits or leases, but he also has broad discretion to prescribe operating terms and conditions. Existing law appears fully adequate to authorize supervision over leasable mineral operations as they may affect other land uses and environmental conditions.

While representatives of the oil industry have stated that the leasing system has been generally satisfactory from their point of view, producers of other minerals have stated dissatisfaction with the manner in which broad administrative discretion has been exercised. We recognize that desirable changes in the leasing system can be accomplished by administrative action. However, we have concluded that the system can be improved, and that modifications should be accomplished by statutory action.

As noted above, the Department of the Interior has complete discretion to issue or not to issue a prospecting permit or mineral lease on lands otherwise open to leasing. Administrative discretion to establish operating terms and conditions is almost equally sweeping. Since authority to prescribe operating terms and conditions is manifestly adequate to resolve conflicts with other land uses and provide needed environmental restrictions, *we recommend that Congress prescribe the guidelines under which prospecting permits and leases may be refused on public lands open to mineral exploration.* For example, it might well be provided that the administrator would have the discretion to refuse an application if the areas sought had not yet been classified in accordance with our Planning or Environment recommendations. This type of limitation on administrative discretion would be consistent with our view that Federal mineral policy for public lands should include a continuing invitation to explore and develop minerals on those lands open to mineral activities.

Competitive Exploration Rights

Recommendation 49: Competitive sale of exploration permits or leases should be held whenever competitive interest can reasonably be expected.

We noted above that when certain mineral conditions are known to exist, the existing leasing system requires competitive sale of exploration and development rights. We have concluded that these competitive sale requirements are too narrow in scope, particularly in the case of oil and gas. It appears to the Commission that competitive leasing would be appropriate (1) in the general area of producing wells, (2) for land covered by relinquished or forfeited leases or permits, or (3) where past activity and

[26] For a comprehensive discussion of the competitive and noncompetitive leasing systems for Federal lands see Rocky Mountain Mineral Law Foundation, *Federal Competitive and Noncompetitive Oil and Gas Leasing Systems.* PLLRC Study Report, 1970, Chapters IV and V.

government. Many wholesome *procedural* changes are recommended in this report. But these essential features of the early system are preserved:

1. Hard mineral explorers may go on the public lands and search for minerals except where particular lands are withdrawn or their use restricted.

2. Mineral developers may obtain fee title to the minerals and, if they desire, may purchase so much of the surface as may be needed for a mining operation.

In the past these developers have paid no direct charge to the United States for the removal of locatable minerals. The Commission has recommended that royalty payments be made.

A sound, workable mineral leasing system has been part of the law since 1920. It represented an arduous congressional effort extending over a generation and there is general agreement that the system has worked reasonably well. Leasing and permit systems are the law of many states which own public lands. This approach to the exploration and development of *all* minerals on the public lands of the United States should be adopted, except where minerals are sold outright.

As we understand it, those who oppose the idea have three basic objections: 1) under the present leasing system the Secretary of the Interior has uncontrolled discretion over what land will be made available for mineral development; 2) under the present leasing system the leasehold interest does not provide sufficient security interest for the raising of investment capital since developers are subject to ex post facto regulation; 3) under the present leasing system small developers are handicapped in the competitive bidding situations as the cash bonus offer is the only bidding tool available and small developers may suffer from a lack of capital.

We recognize the legitimacy of these objections and would propose these modifications to the present leasing system: 1) that the Congress list values the Secretary of the Interior will consider when deciding to lease available land and give a right of judicial review for abuse of discretion; 2) that leases be protected from ex post facto regulation of the mineral operation and that the life of the lease be equal with the productive life of the mineral deposit; 3) that in competitive bidding situations the Secretary of the Interior be authorized to consider the royalty offered as well as the cash bonus offered when awarding a lease.

These proposals may not convince vigorous advocates of the location-patent system of the merits of our position. However, to those who maintain that a leasing system for hardrock minerals is inherently incapable of providing sufficient incentive for the mineral development of our public lands, we suggest that quick reference be made to mineral development of Indian lands, where just such a system has worked well, and to the state leasing systems.

general knowledge suggest reasonably good prospects for success.*

To achieve the objective of this recommendation, the administrator should have the authority to segregate public land from mineral exploration for a short period of time. At the end of the prescribed period exploration rights should be available noncompetitively in the same manner that we have recommended with regard to other minerals.

Adoption of this recommendation would eliminate the need for the simultaneous filing system currently in effect. Similarly, this would eliminate the known geologic structure as a standard for competitive allocation of oil and gas leasing rights.[27]

Prospecting permits and leases should apply to all leasable minerals unless expressly excluded by the administrator in accordance with legislative guidelines. Unless a particular mineral or class of minerals is specifically mentioned, it is excluded from permits or leases at the present time. In our view, this practice does not conform to changes in technology and mineral industry patterns in recent years. Diversification has proceeded to the point where, as a general rule, a mineral explorer can be expected to develop any commercially valuable deposit he may find. Of course, the administrator should have carefully defined authority to exclude minerals, particularly when available information indicates that competitive sale of exploration rights for particular minerals would be appropriate.

Congress should provide guidelines to implement this recommendation that would (a) limit the area covered by a single exploration lease or permit and the aggregate acreage any one explorer can hold, (b) specify the period of time for which the exploration right is granted, and (c) establish performance requirements designed to assure diligent exploration as a condition of retaining and renewing the rights conferred. *We are convinced that there should be maximum sizes prescribed for prospecting permits and nonproducing leases to promote competition in mineral exploration and eliminate holding areas without development. Limits should apply only to such situations and should not include producing areas where no maximum acreages are believed necessary.*

In some respects these ends are achieved by law or administrative regulation. However, there is a lack of uniformity which should be corrected. For example, no performance requirements are imposed in oil and gas leases, many of which are issued for 10-year terms, other than a provision that a two-year renewal of a nonproducing lease may be obtained only if actual drilling operations are being diligently prosecuted at the expiration of the primary term.[28] Such a provision does not adequately protect against mere speculation and certainly does not assure diligent exploration efforts.

Under the existing leasing system, administrators have considerable authority through regulation and practice to modify operating conditions unilaterally. This has led to misunderstandings and a lack of confidence in lease tenure, particularly among producers of leasable minerals other than oil and gas. *We recommend that, as nearly as practicable, all rights and obligations, including those related to maintenance of the environment, of mineral explorers and developers be clearly defined at the outset of their undertakings, and the unilateral authority to modify operational and payment requirements should be limited under guidelines to be specified by the Congress.* It is unfair for one party to an arrangement to have the unilateral power to impose higher royalty obligations or more stringent operating conditions on the other party, particularly when no standards are specified for such changes. Even in the case of renewals, we believe revisions of this kind should be authorized only within limitations to be established by law. Limitations of this kind are not provided under the existing law.

Consistent with our recommendations for the location-patent system we, of course, expect that prospecting permits and leases would require compliance with guidelines to minimize use conflicts and protect the environment. Exploration, development, and production plans should be subject to approval in the manner we recommend for the location-patent system. Also, equivalent *rehabilitation requirements should be applied. These matters, now left to administrative discretion, should in our view, be required by statute.*

In the competitive sale of mineral leases, it is common practice for the administrator to reserve the right to reject all bids, even when one or more exceeds the minimum considered acceptable at the time the sale was announced. This right occasionally is exercised and customarily no public reasons are announced for the action. We believe it is in the public interest to reserve this right. *The reasons for rejecting all bids at a competitive mineral lease sale should be made public, but the exercise of this authority should not be legally reviewable except in cases of abuse of discretion.*

Some public lands are in states having laws under

[27] The expanded competitive leasing system we recommend will, we believe, eliminate the improper use of partial assignments discussed in the Comptroller General's Report (B–118678) dated March 17, 1970.

* Commissioners Clark, Goddard, and Hoff submit the following separate views: The abolition of all noncompetitive leasing was proposed by us in more than one Commission session. Developments in Alaska and the Report by the Comptroller General, B–118678, dated March 17, 1970, on leasing emphasize this view.

[28] 30 U.S.C. § 266(e) (1964).

which oil and gas production is prorationed. In some states this prorationing is partially based on estimates of market demand and price levels. Federal administrators are legally charged with responsibility for proper conservation practices in the production of oil and gas from public lands,[29] and state laws are not explicitly mentioned in Federal leasing laws. To date, Federal authorities have permitted state conservation regulations to be applied to public land production. *Conservation of these public land resources is a Federal responsibility, and we oppose any effort to change existing laws to require compliance with state prorationing programs.*

Leasing laws typically establish minimum rentals and royalties on production. While the authority exists to use competitive royalty bidding, competitive sales have been made on the basis of the highest cash bonuses offered. We believe that greater flexibility should be authorized and practiced under the leasing system. *The administrator should have the discretion to employ a combination of bonus, royalty, and rentals, or outright sale of the minerals in place as may be appropriate in particular situations.* The tools available to him should permit the fullest exercise of sound business judgment.

In recommending continuation of three mineral disposal systems, we further recommend that Congress should clearly specify the lands and the minerals to which each of the system applies. At present, the General Mining Law [30] applies to all minerals not covered by the various leasing provisions or the Materials Act.[31] Our studies have established that there are a number of important legal questions concerning the applicability of these systems. For example, definition or identification of a common variety of building stone has been the source of difficult litigation in the administration of the Materials Act. In any event, assurance of environmental quality should be included in the statute setting forth the minerals to be sold under the sale system in a manner similar to that which we recommend under the location-patent and leasing systems.

We recommend that Congress define or list those minerals to which the location-claim and leasing systems apply and provide that all other minerals be subject to sale under an act similar to the Materials Act. Likewise, there should be a statutory delineation of the categories of lands to which each system would be applicable.

Uncertainty has occasionally arisen as a result of the fact that minerals disposable under one system may be found in a deposit also containing minerals disposable under another system. The occurrences of uranium in lignite and dawsonite in oil shale are prominent examples. *A simple, comprehensive procedure should be established for allocating development rights to all intermixed minerals occurring in the same tract of land.*

[29] see 30 U.S.C. § 226(j) (1964).

[30] n. 1, supra.

[31] n. 4, supra.

Items of Special Concern

Hobby Mineral Collections

Recommendation 50: Statutory provision should be made to permit hobby collecting of minerals on the unappropriated public domain and the Secretary of the Interior should be required to promulgate regulations in accordance with statutory guidelines applicable to these activities.

We recognize that the number of mineral collectors has increased to the point that regulation is now necessary. The general mineral development systems we propose are not pertinent to these hobbyists. Statutory guidelines and administrative regulations should be flexible in order to meet variable local conditions, but the permit requirements and fees to be charged should be set forth clearly.

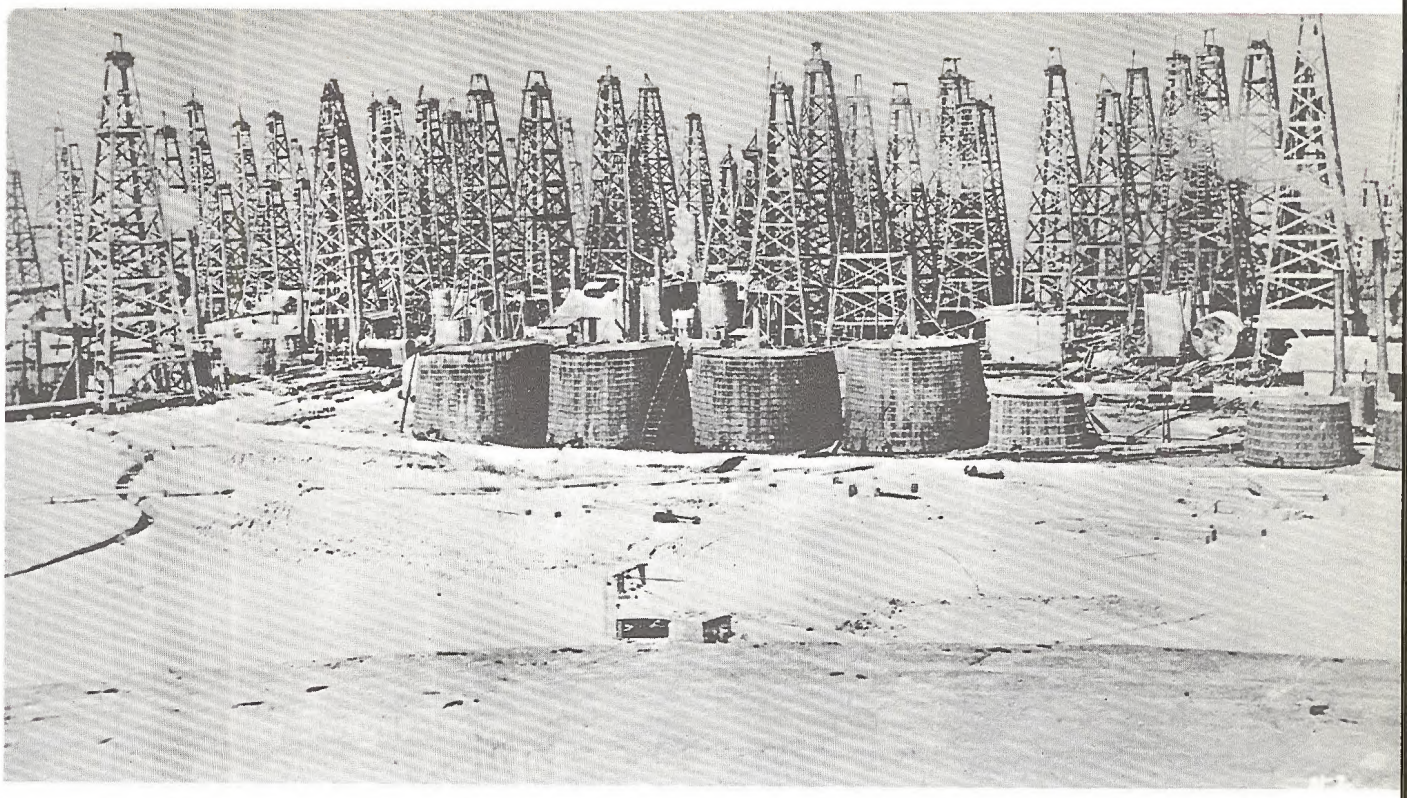
Oil Shale

The reserves of oil shale in Colorado, Utah, and Wyoming constitute a tremendous energy resource. To date they have not been commercially developed, although pilot programs have been conducted from time to time. These deposits are principally on public lands, and our public land laws should provide a climate for their development when economically feasible.

Resolution of Title Problems

Recommendation 51: Legislation should be enacted which would authorize legal actions by the Government to acquire outstanding claims or interests in public land oil shale subject to judicial determination of value.

At the present time there are serious problems arising from disputes over rights to public lands claimed as a result of mining claims and prospecting permits. Massive efforts have been directed at resolving these title problems through administrative and subsequent judicial procedures, but this is an expensive and tedious process. We believe additional authority to bring legal actions to acquire claimed interests should be granted to expedite resolution of these problems with regard to key tracts of shale-bearing lands. This would facilitate initiation of development programs.



Conservation of oil resources in the United States has progressed dramatically since 1903, when proper spacing of oil wells was not required.

Experimental Commercial Development

Recommendation 52: Some oil shale public lands should be made available now for experimental commercial development by private industry with the cooperation of the Federal Government in some aspects of the development.

An effort has been made to institute a test lease program which up to the present time has not been fruitful. We believe this program is of sufficient importance to warrant emphasis at an early date. From the results so far is seems clear that to be viable such a program should: (1) offer for lease tracts sufficiently large to permit amortization of investments required for commercial development; (2) give weight to industry nominations relating to location and size of tracts, lease duration, and size of plant; (3) not bar the holder of a test lease from eligibility for leases subsequently issued under a general leasing program; (4) include experimental use of bonuses, royalties, and rentals; (5) provide fixed terms, conditions, and royalty payments for the term of the lease; and (6) not interfere with process patent rights of lessees acquired prior to issuance of the leases.

One troublesome area is the uncertainty surrounding the environmental controls that will be necessary in developing an oil shale industry. For the purposes of the test program the Federal Government should accept partial responsibility for the costs of minimizing environmental impacts and for carrying out rehabilitation of mined areas. This would allow for needed experimentation in the mitigation and prevention of adverse impacts of oil shale development.

Removal of Restrictions

Recommendation 53: Restrictions on public land mineral activity that are no longer relevant to existing conditions should be eliminated so as to encourage mineral exploration and development and long standing claims should be disposed of expeditiously.

Coal Leases

Provisions of existing law prohibiting the apportionment of royalties and imposing minimum production requirements on each lease [32] *should be modified to permit unitization of public land coal leases.*

[32] 30 U.S.C. § 201–1 (1964).

There is an increasing demand for large consolidated coal reserves, particularly where needed to assure a long-term fuel supply for mine-mouth generating plants. We believe it is in the public interest to permit the same techniques for unitization of coal leases as are now allowed for oil and gas.

Likewise, restrictions upon the leasing of public land coal deposits to railroad companies should be removed.[33] The fears of monopolistic control which led to the enactment of the existing restrictions no longer are applicable. The importance of pipelines and truck transportation and the growing use of mine-mouth generation have materially reduced any competitive advantages railroads may once have had over other coal producers. Furthermore, it appears that other Federal laws, such as the antitrust laws, are far more effective in regulating the competitive position of the railroads than the public land laws.

Geothermal Resources

Congress should provide a specific policy of leasing geothermal resources in which fair and reasonable consideration is given to the equities of holders of asserted prior rights who expended money and effort. It has been held that no existing mineral disposal system applies to geothermal steam available in public lands.[34] One bill that would have authorized leasing of these deposits was vetoed. Some of those who pioneered in an effort to develop these resources under existing law have equitable claims to a priority under new legislation. Although we believe that these equities should be recognized, we would not recognize equities based on actions that took place after introduction of the first bill designed to establish a system for disposal of the geothermal resource.

Geothermal resources may well require tailored acreage limitations and flexible provisions relating to terms and conditions. *Acreage limitations and guidelines for readjustment of terms and conditions in geothermal resource leases should be established with due regard for the nature of the resource.*

It has been held by the Department of the Interior that geothermal steam has never been included in mineral reservations contained in public land patents.[35] Nevertheless, other minerals reserved to the United States, such as potassium and sodium, are frequently found with geothermal steam. *Specific provision should be made to resolve this complication promptly.* Reserved mineral interests in lands containing geothermal resources should be disposed of in the same manner as we recommend at the end of this chapter with regard to reserved minerals generally. However, one who develops geothermal resources on patented lands should have a preference right to a lease of reserved minerals found therein.

Alien Ownership

There are restrictive provisions in public land laws relating to direct and indirect ownership by aliens of interests in public land minerals. In some instances these restrictions apply to minute fractional interests of no significance.[36] *In view of the substantial overseas commercial and investment interests of United States corporations and individuals, we believe existing restrictions on alien ownership should be removed except when required by explicit foreign policy considerations of general applicability to transactions of aliens.* The Commission perceives no reason to single out public land transactions as warranting unusual restrictions on aliens.

Administration

Recommendation 54: The Department of the Interior should continue to have sole responsibility for administering mineral activities on all public lands, subject to consultation with the department having management functions for other uses.

Although an agency such as the Forest Service, with general administrative responsibility over a particular unit of public land, should be consulted, mineral activities, where allowed, should be uniformly and independently administered. The values involved are large; and substantial policy differences among agencies should not be tolerated. Also, in order to protect interest in these values, minerals expertise should be readily available to administer the mineral laws. Consultation and cooperation among agencies will assure that mineral development is consistent with development of the surface values of the public lands and preclude undesirable impacts on the environment.

Reservation of Mineral Interests

Recommendation 55: In future disposals of public lands for nonmineral purposes, all mineral interests known to be of value should be reserved with exploration and development discretionary in the Federal Government and a uniform policy adopted relative to all reserved mineral interests.

[33] 30 U.S.C. § 202.

[34] See Opinion of the Solicitor, Department of the Interior M–36625 (August 28, 1961).

[35] See Hearings on H.R. 733 H.R. 10204, S. 1674, before the House Subcommittee on Mines and Mining of the Committee on Interior and Insular Affairs, 89th Cong. 2nd Sess. 122, 170 (1966).

[36] See, for example, as to mineral leases, 30 U.S.C. § 181 (1964).

Reserving valuable mineral interests has the obvious merit of providing potential revenues and permitting consolidation of mineral interests for potential development. Also, it forestalls possible windfalls to surface owners.

Where there are no known mineral values and if the property is being acquired by payment of full value, the mineral interest should be transferred to the purchaser. As a corollary to this, *we recommend that, upon petition of the surface owner, mineral interests heretofore reserved should be sold to the surface owner at appraised market value if there is a determination that the land is not valuable for minerals.* However, the charge for the conveyance should not be less than the administrative cost to the Government.

Recognizing the pitfalls of reserved mineral interests, we have nonetheless concluded, after considering all factors, that the national interest requires a continued policy of reserving known valuable mineral interests. However, in addition to making provision for sale of previously reserved interests where land is not valuable for minerals, *we also recommend that upon a clear showing of need to unite the surface and subsurface titles in order to permit development of the surface, surface owners should be allowed to acquire valuable mineral interests at their appraised market value.*

Under existing laws, there are a variety of provisions for reservation of minerals. Some, such as the Stockraising Homestead Act [37] and the Public Lands Sale Act of 1964,[38] require reservation of *all* mineral interests. We believe this to be poor policy since reserved interests constitute clouds on title which frequently hinder later shifts of such properties to higher uses. This has required individual relief statutes in order to permit a surface owner to use his property even though there is no known mineral and little likelihood of any interference. Similarly, land that was once agricultural has become suburban residential land for expanding communities in which it would be impractical to develop a mineral deposit in most cases.

There are over 62 million acres of land, the surface of which is in non-Federal ownership, in which the Federal Government holds reserved mineral interests. With respect to those minerals subject to leasing, exploration and development is permitted only with the consent of the United States. However, no such

[37] 43 U.S.C. § 299 (1964).
[38] 43 U.S.C. § 1424 (1964).

The Piceance Basin of Colorado, Utah and Wyoming contains most of the known oil shale deposits (shown in the upper strata) in the United States. These reserves constitute a tremendous energy resource.

consent is required for most of the reserved interests in those minerals covered by the General Mining Law of 1872.[39] Present law is totally inadequate to provide proper consideration of the legitimate interests of surface owners.

In order to permit all concerned to have a clear understanding of the manner in which reserved mineral deposits can be explored and developed, *we recommend enactment of statutory guidelines under which the Secretary of the Interior would establish regulations providing that no mineral activity is permitted without his approval and without the assurance of appropriate compensation for affected surface resources, values, and uses.* Provision should be made for judicial determination if the parties cannot agree on compensation. Such a law should reserve to Congress approval of any mineral activity in areas such as highly industrialized or concentrated residential communities or those containing high quality scenic, recreational, or historical values. Likewise, exploration for and development of reserved minerals should not be permitted if such activities would be inconsistent with local zoning.

[39] n. 1, supra.

CHAPTER EIGHT

Water Resources

FEDERAL LANDS are the source of most of the water in the 11 coterminous western states, providing approximately 61 percent of the total natural runoff occurring in the region. Most of this runoff comes from land withdrawn or reserved for specific purposes. Forest Service and National Park Service reservations contribute about 88 and 8 percent, respectively, of the runoff from public lands and more than 59 percent of the total yield from all lands of those states. Other public lands, such as the vast acreages administered by the Bureau of Land Management, do not contribute much to the overall yield of western streams, but are so situated that they influence water quality.

The importance of the water yield from public lands to the economy, present and future, of the 11 western states is clear: Approximately $12.5 billion has been invested by public and private sources in water storage facilities, and additional billions have been invested to irrigate 23 million acres of land dependent in major part on public land water yields; about 96 percent of the region's 32 million people and most of its major cities and metropolitan areas are dependent in some degree on public land water; and the virtually entire hydroelectric capacity of 23.6 million kilowatts (as of 1968) is dependent upon water which originates on public lands.

While water and land use problems are closely, almost inextricably, interwoven, this Commission is charged only with recommendations relative to public land policy.[1] Therefore, we have confined our deliberations and recommendations to those significant water matters which have a direct relationship to public land policy.

First, in the controversial field of Federal-state water rights, the Commission has examined the legal basis for the use of surface and underground water on the public lands in connection with programs for the disposal or retention and management of the public lands. Attention has been focused on the implied reservation doctrine of Federal water rights, which is based on withdrawals of public domain lands from the operation of some or all of the public land laws.

Second, we have reviewed the various watershed protection and management programs designed to regulate streamflow and maintain or improve its quality or, to a lesser degree, to increase water yield on the public lands.

Third, we have considered whether due regard is given to impacts on public land resources and values in multi-purpose water project planning and operation.

Fourth, we have given attention in our chapters on individual commodities and environmental policy to those public land programs which may have polluting effects on public land water, and have made recommendations concerning statutory and administrative policies designed to prevent or minimize such adverse effects.

The Implied Reservation Doctrine of Federal Water Rights

As successor to the sovereigns from which the United States obtained the vast areas of the western public domain, the Federal Government by the mid-19th century possessed complete power over the land and water of that region. Because the courts have settled the issue, there is little to be gained in academic arguments as to whether that power derives from concepts of "ownership" as distinguished from "sovereignty": the power is plenary, whatever its conceptual basis.

[1] The National Water Commission was created by Congress (Act of September 26, 1968, 82 Stat. 868) to study and make recommendations concerning broad national water policy problems, e.g., the Federal water resource development programs administered by the Bureau of Reclamation and the Corps of Engineers.

By a series of acts in 1866, 1870, and 1877,[2] when Federal policy stressed the disposition of the public domain under the homestead, public sale, and other settlement and disposal laws, Congress provided that such Federal land disposals would not carry with them an accompanying water right. Rather, the water on the public lands was declared open to use, and property rights to its use were to be obtained under the laws and customs of the states and territories. As to lands retained in Federal ownership, there were none of the public land management programs we know today requiring water use on Federal lands by the Federal Government or its agents, e.g., mineral leasing operations, recreation facility management, fish and wildlife protection and habitat enhancement, and so forth. Accordingly, the Federal Government did not then have to face up to whether it would comply with state water laws.

By the turn of the century, the Federal Government had started reserving public lands from disposition by setting aside national forests and parks, creating wildlife refuges, and making large-scale withdrawals for other purposes. With respect to the water needs associated with programs on these lands, the usual practice during the first half of this century was for permittees, licensees, etc., to acquire necessary water rights under state law in accordance with the policy stated in the 1866, 1870, and 1877 acts. The Federal agencies generally followed that same practice for their program needs.

In the 11 western states the predominant water right system is the law of prior appropriation, which was adopted as being most suitable to a water-short region. Under this system prior use establishes priority of right, and nonuse for prescribed periods will cause a forfeiture. In times of shortage, uses are curtailed in inverse order of their priorities. The riparian law of water rights [3] which prevailed in the more humid eastern states was rejected as unsuitable. Its principal vice was that an upstream riparian owner could do nothing indefinitely while his neighbor downstream put water to use and became dependent thereon, yet at any time the upper riparian could assert his equal right and destroy or impair the effort and investment of his neighbor.

An appropriative water right may be acquired only for a beneficial purpose, and even if the proposed type of use is beneficial under state law, it must usually also be a reasonable use in the light of other demands for water. While there are diversities among the water laws of these states, they are generally consistent in recognizing, by statute or decision, domestic and municipal purposes, irrigation, mining, power, and manufacturing, as well as other similar uses, as beneficial.

Although the decided court cases indicate that there is no serious problem in obtaining rights for recreation and fish and wildlife conservation, several of these states do not expressly specify such uses as beneficial in their water statutes.

Nearly all state appropriative water laws also establish a system of preferences under which certain beneficial uses are preferred over others. In most of these 11 states, domestic, stock-watering, and municipal uses appear to have preferred status over irrigation, and irrigation is preferred over all the remaining uses. Recreation and fish and wildlife uses are not preferred uses in these states. This has caused concern that Federal program needs, particularly for fish and wildlife, may not be fully served if the Federal Government must rely on these state laws. However, while problems for Federal agencies may yet develop because of state laws relating to beneficial use or preferences, none has been brought to our attention.

In nearly 100 years of development, state water law has achieved a reasonable certainty of results which has permitted substantial public and private development in the West. While sometimes necessarily complex, state administrative and judicial procedures have provided a means to determine security of rights to the use of water.

However, in 1955, the Supreme Court in the *Pelton Dam* decision [4] indicated that the withdrawal or reservation of Federal lands for specified purposes also reserved rights to use water on such lands, even though the legislative or executive action made no mention of water or its use. Under this doctrine such reserved water rights would carry a priority as of the date of the reservation or withdrawal of the lands.

Although the possible consequences of the decision that state law need not control the acquisition of water rights for such "reserved" lands were disturbing to many in the western public land states, under the facts of the case the *Pelton Dam* decision itself did not require infringement of water rights previously vested under state law. The limits and impact of the newly enunciated application of the reservation doctrine were left uncertain. However, some of the Federal agencies began to rely on this doctrine for water rights in addition to their customary compliance with state law.

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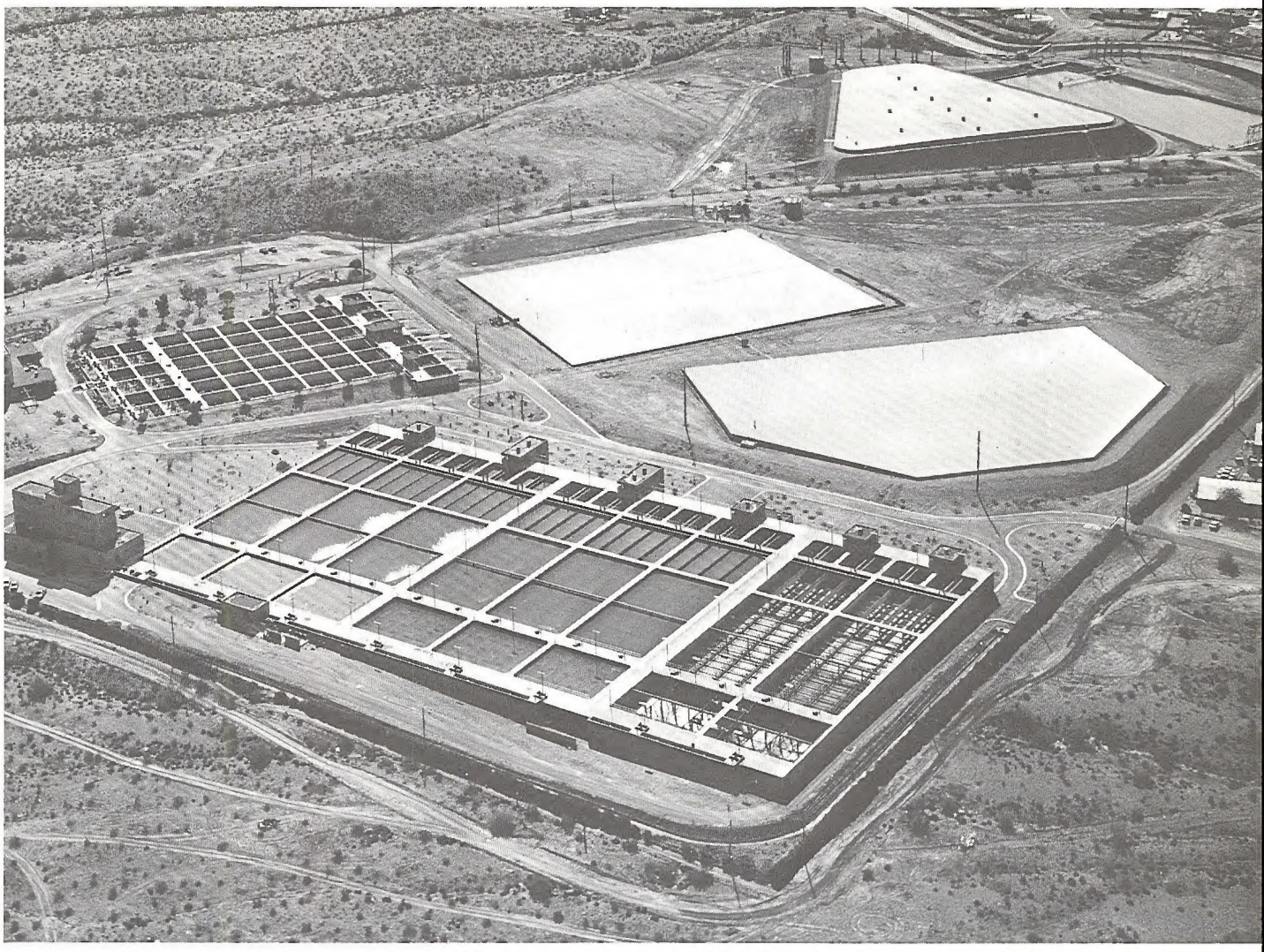
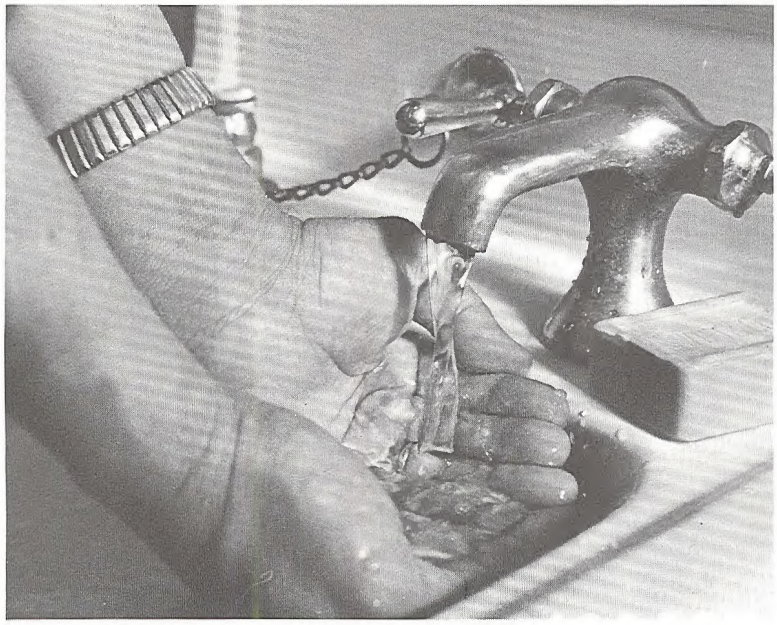
[2] The revelant portions of the acts are codified as 43 U.S.C. §§ 321, 661 (1964).

[3] The riparian system has three major features, all of which are the antithesis of the appropriation doctrine. First water may be used only by a riparian landowner, on riparian land, and within the natural drainage basin of the stream from which it is taken. Second, it is neither acquired by use nor lost by nonuse. Third, it is correlative, in that all users share shortages ratably.

[4] Federal Power Commission v. Oregon, 349 U. S. 435 (1955).





Domestic and municipal uses share priority on water in most Western states.

In 1963, any lingering doubts about most of the implications of the reservation doctrine as a source of water rights were removed in the Supreme Court's decision in *Arizona v. California*.[5] By analogy to earlier Indian cases, and in partial reliance on the *Pelton Dam* decision, the Court sustained the conclusions of its Special Master in that case that certain reservations of public domain land for particular purposes, *i.e.*, wildlife refuges, a national forest, and a national recreation area, carried with them an "implied" reservation of sufficient unappropriated water to satisfy the reasonable requirements of those reservations without regard to the provisions of state law.

Since then, the Forest Service and the military departments have indicated that they will no longer comply with state law in acquiring rights for the use of water on reserved lands, and will rely on Federal claims arising out of the reservation or withdrawal of the public lands they administer. Other Federal agencies, such as the National Park Service, still have a policy of compliance with state appropriation procedures, but whether this will continue is uncertain.

The result has been apprehension in the western public land states that the doctrine will have the effect of disrupting established water right priority systems and destroying, without compensation, water rights considered to have vested under state law. Moreover, the uncertainty generated by the doctrine is an impediment to sound coordinated planning for future water resources development.

Legislative proposals that Congress either affirm, abolish, or clarify the reservation doctrine have been the subject of numerous hearings and discussions during the last decade, but Congress has taken no action on the matter. The issue has been one of the most controversial before the Commission.

The Commission gave much attention to the question of whether this controversy might be only a doctrinal legal argument with little substantive impact. We conclude it has substance.

Although most of the current concern relates to the doctrine's potential future impact, such potential impacts could be major.[6] This would be particularly likely on specific streams or systems where water is now virtually completely appropriated under state law.

We recommend legislative action to dispel the uncertainty which the implied reservation doctrine has produced and to provide the basis for cooperative water resources development planning between the Federal Government and the public land states.

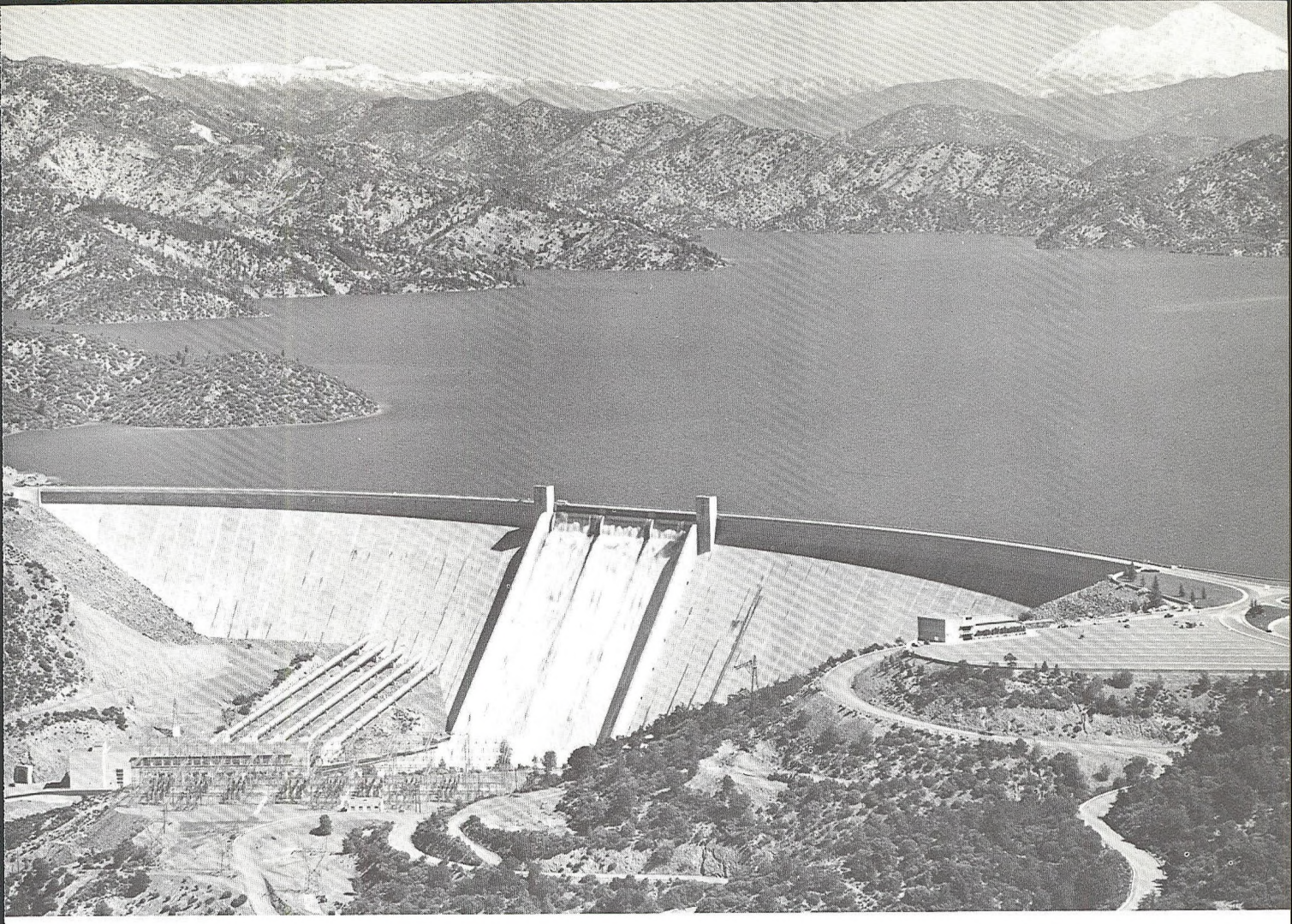
The reservation doctrine has several advantages for the Federal Government. (1) As reservation needs develop, uses under it can expand indefinitely without regard to state water law requirements that water be put to beneficial use within a reasonable time. (2) Vast reserves created around the turn of the century carry advantageous early priority dates vis-a-vis state-determined priorities. (3) The Federal Government need not pay any compensation for divested non-Federal rights initiated after the date of the withdrawal or reservation, however long the water may have been beneficially used. (4) The Federal use need not be "beneficial" under state law if it is within the scope of the purposes for which the reservation or withdrawal was created.

While the advantages of the reservation concept to Federal agencies are apparent, there are problems which must also be considered from the Federal standpoint. (1) In *Arizona v. California*[7] the Master required some evidence of intent for each land reservation before he would sustain an implied reservation of water. It is not clear whether such an intent would be implied for all reservations and withdrawals, although to date it appears this should ordinarily be no problem if water is essential to the express purposes of the reservation. (2) There is some doubt whether any use will be implied other than those expressly stated at the time of withdrawal. (3) It appears that where the purpose of a withdrawal or reservation is changed, the priority date of the new use will be the date of the use change and not that of the earlier use. (4) Without litigation or agreement it is not possible to determine what the maximum permissible amount of water would be for any given use. In *Arizona v. California*, for example, the amount allowed for irrigation uses was based on irrigable acreage and then current Bureau of the Budget standards of economic feasibility. The effect of future changes in feasibility standards is uncertain. (5) It is not clear what the physical relationship of the reserved land must be to the source of the water supply, *i.e.*, whether a reservation right is available for land outside the natural watershed of the river system from which the water would be drawn. (6) It is not clear whether acquisition of a state appropriative right by the Federal Government or its lessees, licensees, and permittees has the effect of waiving any reservation right to additional water for that particular use. (7) It has not been determined whether termination of a land withdrawal or reservation also terminates the reserved water right, even when the particular use continues thereafter.

[5] 373 U. S. 546 (1963).

[6] Even though Federal departments and agencies were requested to estimate future water needs for the use in our contract water study, the estimates provided were obviously rough, not all-encompassing, and, therefore, unconvincing. We also note that the needs expressed could not be considered as maximums.

[7] n. 5, supra.



Nearly all power and irrigation storage reservoirs in the West are dependent upon public land water.

Federal lands provide most of the water for the 11 Western states. Much of it originates as snow, which nourishes the watershed each spring.

Limitation of Reservation Doctrine

> Recommendation 56: The implied reservation doctrine of water rights for federally reserved lands should be clarified and limited by Congress in at least four ways: (a) amounts of water claimed, both surface and underground, should be formally established; (b) procedures for contesting each claim should be provided; (c) water requirements for future reservations should be expressly reserved; and (d) compensation should be awarded where interference results with claims valid under state law before the decision in Arizona v. California.

Although state law appears to be generally adequate as a basis for water rights for uses on reserved public lands, the reservation doctrine should not be abrogated. To do so and to require the public land agencies to rely solely on state law for the acquisition of water rights for reserved land uses presents several problems:

(1) In some states important Federal uses, such as for recreation or fish and wildlife purposes, are either not recognized as beneficial uses or have low preferences vis-a-vis other competing uses.

(2) The implied reservation doctrine provides the necessary water rights for certain Federal uses and future needs for which state law has not been complied with for one reason or another. To discard the reservation doctrine might well place the validity of those rights in question and inject further uncertainty into this area.

Nevertheless, the implied reservation doctrine as announced and applied in *Arizona v. California*[8] has created many problems. Numerous unanswered questions about its scope and impact remain. The

[8] n. 5, supra.

two most important questions which Congress should resolve, however, center on (1) the uncertainty which the doctrine has engendered, and (2) the equity of holders of water rights vested under state law, whose rights may be curtailed without compensation through its strict application. Solutions of these two critical problems will permit reliance on the reservation doctrine where necessary to assure adequate Federal water rights for the reserved public lands, and at the same time minimize disruption to existing state administrative machinery, promote more effective water resources planning, and provide equitable treatment to holders of water rights vested under state laws. Consequently, we recommend that Congress take the following legislative actions:

(1) *Provide a reasonable period of time within which Federal land agencies must ascertain and give public notice of their projected water requirements for the next 40 years for reserved areas, and forbid the assertion of a reservation claim for any quantity or use not included within such public notice.*

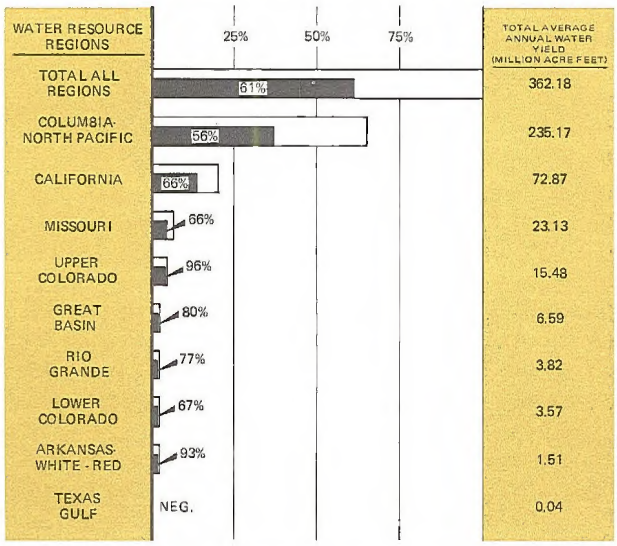
Some Federal agencies, in particular the Forest Service, are endeavoring to refine their data on present uses and future requirements and to provide such information to state water authorities. However, there is nothing in the present legal system which requires this or makes such quantification binding on the agencies, and they would be free to enlarge these projections in the future as they deem fit.

Most of the present uncertainties should be removed by requiring a binding quantification and delineation of Federal claims, particularly such questions as quantities of water reserved, priority of right, permissible purposes and places of use, etc. These determinations might be made as part of the review of existing land withdrawals which we recommend elsewhere in this report, although a shorter time period for this effort seems desirable. In those cases where it seems likely that existing uses on reserved lands will increase to significantly larger estimated future requirements at a relatively modest rate over the 40-year period, Congress may wish to provide a means for the agencies to permit interim use of reserved water until it is needed for Federal purposes. This would promote maximum beneficial use of water and could be done through formal arrangements with the states.

(2) *Establish a procedure for administrative or judicial determination of the reasonableness of the quantity claimed, or the validity of the proposed use under present law.*

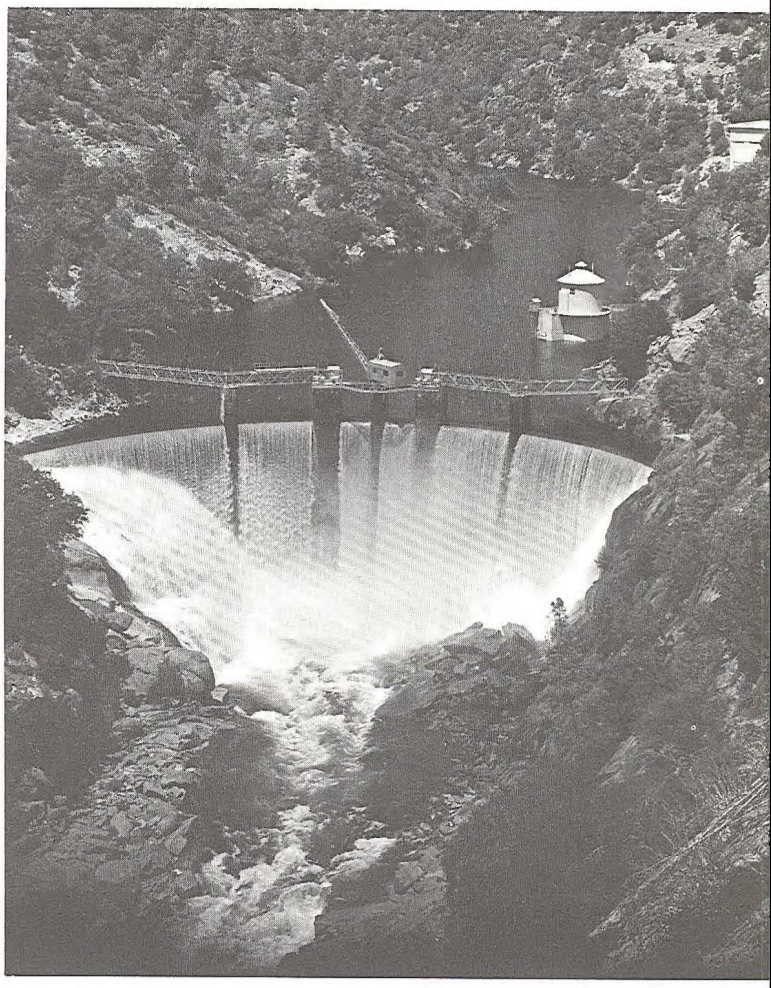
This would give an opportunity for timely contest by present users or appropriate state agencies of the

ESTIMATED CONTRIBUTION OF PUBLIC LANDS TO AVERAGE ANNUAL WATER YIELD IN THE 11 WESTERN STATES BY WATER RESOURCE REGIONS

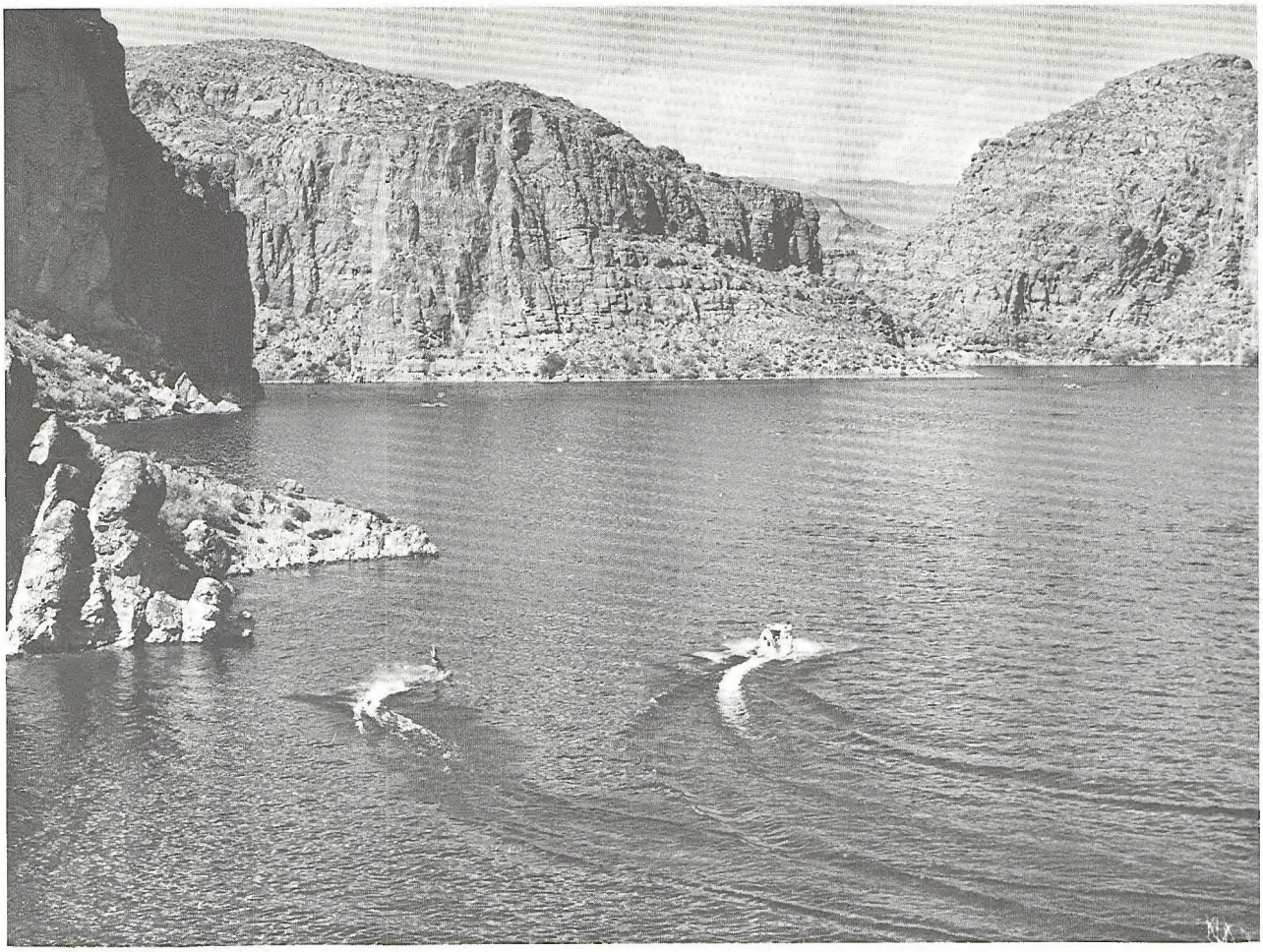


SOURCE: PLLRC STUDY, DEVELOPMENT, MANAGEMENT AND USE OF WATER RESOURCES ON THE PUBLIC LANDS, VOL. II, TABLE 4, P. 494, 1969.

Public lands are the major source of water in the West.



This dam in the Sierra Nevada mountains is part of a Southern California Edison Company hydroelectric development.



Impounded water, whether natural or man-made, is America's favorite medium for recreation.

quantity or legality of the use, such as whether the use is properly implied from the creation of the withdrawal or reservation. At the present time there is no procedure for doing this.

There is no effective judicial machinery to permit the resolution of the many issues raised by the reservation doctrine, even if a case-by-case approach to its clarification and refinement were desirable, and we do not believe that it is. Although the United States is free to initiate such a suit, the doctrine of sovereign immunity bars such actions by non-Federal water users or state administrative agencies unless Congress has consented to such a suit. The McCarran Act,[9] which on its face consents to certain kinds of water adjudications, is an unsatisfactory vehicle for obtaining definition of Federal reservation claims. The courts have held that *all* water users on a river system must be joined under that Act,[10] and this is not always possible or feasible. Moreover, the issue of whether the McCarran Act permits adjudication only of rights held under state law and not of Federal reserved rights, as the Department of Justice contends, is now before the United States Supreme Court.[11]

Although we elsewhere recommend that Congress provide for judicial review of public land decisions by aggrieved parties, we are not prepared to go that far with respect to all Federal water right questions. Not only are the questions more complex, but they go far beyond this Commission's jurisdiction, since they usually affect multiple-purpose project developments having little or no public land connection and are best dealt with by the National Water Commission. However, we do recommend provision for judicial review of at least the limited questions of the reasonableness of the quantity claimed under the

[9] 43 U.S.C. § 666 (1964).

[10] Miller v. Jennings 243 F. 2d 157 (5th Cir.), *cert. denied,* 355 U. S. 827 (1957).

[11] U.S. v. Colo. Dist. Ct. for Eagle City, 458, P2d 760 (1969), *cert. granted,* 38 U.S. Law Week 3377 (Mar. 30, 1970 No. 1178).

reservation doctrine, its priority date, and the purposes for which the reserved water may be used.

(3) *Provide that procedures for creation of future withdrawals and reservations require, as a condition to claims of reserved water rights, a statement of prospective water requirements and an express reservation of such quantity of unappropriated water.*

This would have the effect of requiring an administrative or legislative review of these claims and substitution of express water rights reservations for potential implied claims. Coupled with the previous recommendation concerning existing reserved rights, most of the uncertainty generated by the reservation concept should be eliminated.

(4) *Require compensation to be paid where the utilization of the implied reservation doctrine interferes with uses under water rights vested under state law prior to the 1963 decision in Arizona v. California."*

When reliance is placed on Federal water rights impliedly reserved along with the reservation or withdrawal of public lands, the effect may be to displace, without compensation, other non-Federal public and private uses under water rights acquired under state law subsequent to the date when the water was impliedly reserved for the Federal lands, but prior to the date the water was actually put to use by the Federal agencies. This is the principal vice of the doctrine from the viewpoint of individual water users. Prior to the Supreme Court's decision in *Arizona v. California* cited above in 1963, no water user could have been on actual or constructive notice of the existence of such an "implied" Federal water right. The same is true of the state administrative agencies, since as a matter of formal policy and actual practice, the public land agencies generally adhered to state law in acquiring water rights for reserved lands prior to 1963.

As a practical matter, use of the doctrine to cause actual injury to water rights vested under state law without compensation has been rare to date, and the likely future impact is uncertain. However, as a matter of policy Congress has generally provided in the Reclamation Act of 1902 [12] and the Federal Power Act of 1920 [13] that compensation be provided to holders of water rights vested under state law when they are interfered with by projects authorized or licensed under those two acts. We find no reason for a different policy where public land programs are involved. As a matter of fairness and equity, it is appropriate to compensate holders of vested state water rights whose uses are curtailed through Federal reliance on the implied reservation doctrine. We believe that the potential costs to the Federal Government would be relatively low. In any event, the social costs of displacing existing uses for the benefit of national programs should be borne by the Federal taxpayers, and not by the affected individual users.

[12] 43 U.S.C. §§ 371 et seq. (1964).
[13] 16 U.S.C. §§ 791–825 (1964).

Watershed Protection and Management

The statutory directives dealing with watershed protection and management are very general and concerned primarily with flood control. As practiced by the Federal agencies, primarily the Bureau of Land Management and the Forest Service, the principal watershed programs consist of various practices designed to control erosion, floodwater, and sediment damages on the public land watersheds. The principal techniques employed are usually designed to effect soil stabilization and increase grass cover, and are often integral parts of range management programs which benefit domestic livestock and wildlife. The effect of these programs generally is to stabilize or decrease water yield.

Another watershed management program, largely experimental, carried out by the Forest Service in recent years is designed to increase water yield through various manipulative techniques, *e.g.,* clear-cutting of forested areas, manipulation of snow packs, etc.

No priorities for various program objectives exist and, to a certain extent, they are conflicting. For example, planting vegetation to control erosion usually results in decreased runoff into streams because of increased consumption of water by plants. Similarly, clear-cutting of forests to increase water yield generally produces erosion problems.

It is usually assumed that it is in the public interest for these agencies to employ various practices to conserve their watersheds. However, there is little evidence to indicate whether the various programs are producing any net benefits, *e.g.,* whether the improved quality of water made available through decreased sediment loads exceeds the value of the water consumed by the soil stabilizing vegetation, and what the unit costs of any benefits might be.

Reported expenditures by Federal agencies for watershed conservation practices (admittedly very rough estimates) have been at the rate of about $.02 per acre per year on all public land watersheds in the 11 western states. Federal assistance for similar practices on all privately owned lands in the same states has also been about $.02 per acre per year during the same period. When the private matching funds are added, the expenditures are twice as much per acre as those on public lands. Even at the actual spending rate reported by the agencies, it will take 100–200 years to accomplish the watershed conservation measures reported to be needed on Forest

Service and National Park Service units, which yield about 96 percent of all water from public lands.

It has been shown that, on the average, 58 percent of all major stream sediment loads in the 11 western states are contributed by public lands. Most of these high sediment-yielding lands are managed by the Bureau of Land Management, which reported that $298 million are presently needed to correct this condition. At the past rate of expenditure it would take 60 years to achieve that goal.

Stream sediment loads reduce reservoir storage capacity, in addition to affecting fish habitat, municipal water supplies, and irrigated crops. Practically all power and irrigation storage reservoirs in the 11 western states are highly dependent upon public land water. The Water Resources Council has reported that at the present rate of silt deposition, the reduction in storage capacity of all reservoirs in the Nation totals about one million acre-feet per year.[14] The 690 reservoirs in the 11 western states, with an aggregate capacity of 207.5 million acre-feet, involve an investment of some $12.5 billion. The efficiency and investment in these water storage facilities will be substantially reduced in the future if the present sedimentation rate continues.

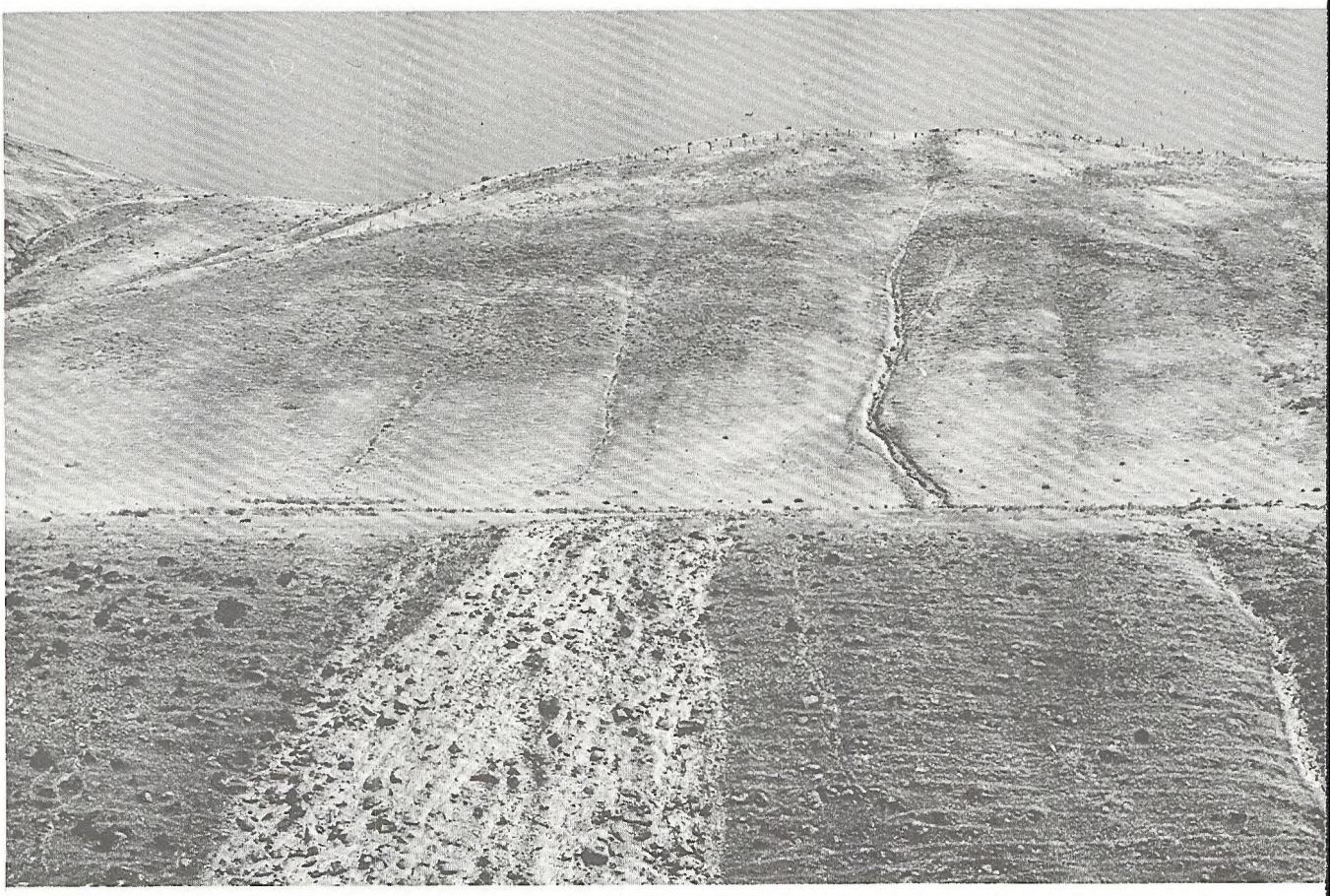
[14] Water Resources Council. *The Nation's Water Resource* 5–5–4 (1968).

Watershed Protection

> Recommendation 57: Congress should require the public land management agencies to submit a comprehensive report describing: (1) the objectives of current watershed protection and management programs; (2) the actual practices carried on under these programs; and (3) the demonstrated effect of such practices on the program objectives. Based on such information, Congress should establish specific goals for watershed protection and management, provide for preference among them, and commit adequate funds to achieve them.

Statutory and administrative objectives of watershed protection and management practices are generally uncertain and often conflicting; programs and practices thereunder are diverse and of unequal

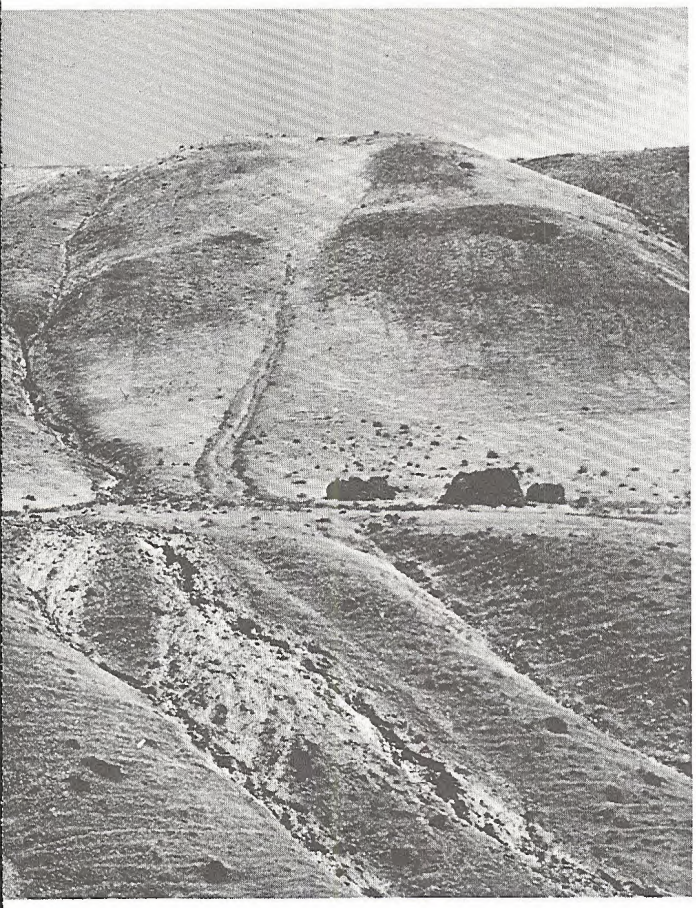
In the absence of erosion-control measures, water seeks its own level without hindrance, sometimes via gullies and



application; effects of the various practices are not presently demonstrable in many cases; and the level of expenditure appears generally inadequate to achieve even minimal objectives within a reasonable time.

If comprehensive data were provided pursuant to statutory directive, as we recommend, Congress should be able to establish realistic goals and priorities for watershed protection and management programs before it commits any substantial funds to broaden existing programs or initiate new ones. Since the Forest Service has extensive experimental research programs underway with respect to increasing water yield and the Bureau of Land Management has just instituted a comprehensive watershed evaluation study designed to obtain the answers to some of these questions, the agencies should be able to report rather promptly. Congress should then be able to provide guidelines to the agencies on fundamental questions such as (1) under what conditions, if any, preference should be given to watershed management programs and expenditures designed to increase water yields rather than provide strict maintenance or improvement of present watershed conditions; and (2) whether reduction of stream siltation from high silt-producing lands should take precedence over any or all other uses in certain regions.

sometimes cascading downhill in wide, shallow streams.



Retention and Acquisition

Recommendation 58: "Watershed protection" should in specified, limited cases be: (1) a reason for retaining lands in Federal ownership; and (2) justification for land acquisition.

One of the reasons for the establishment of the national forests, as stated in the Organic Act of 1897, was "for the purpose of securing favorable conditions of water flows." [15] The same rationale was reflected in the Weeks Act of 1911, which authorized the acquisition by the Secretary of Agriculture of private "forested, cut-over, or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams." [16]

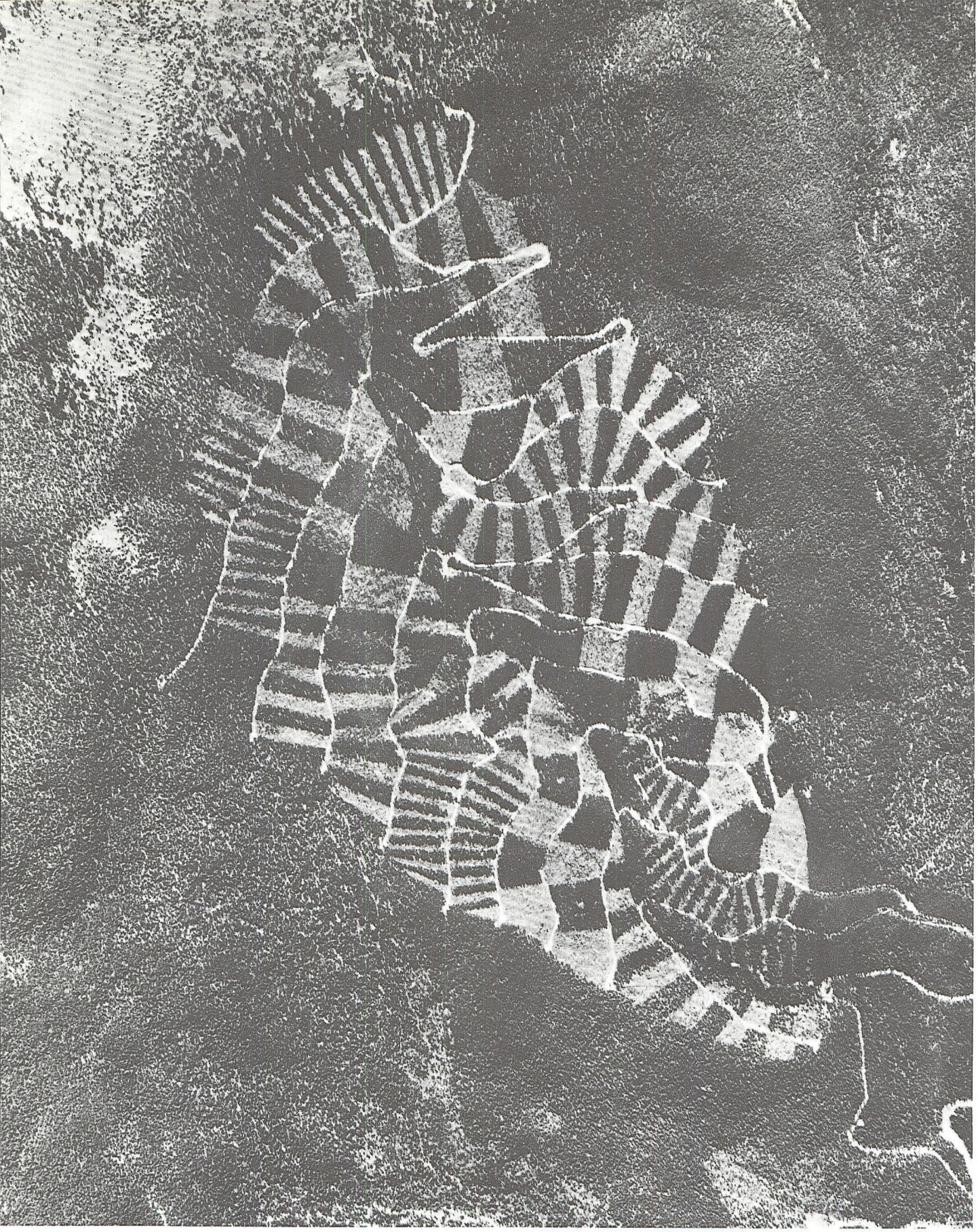
The Multiple Use-Sustained Yield Act of 1960 [17] recognized that the national forests were to be administered, *inter alia,* for "watershed" purposes, but whether this directive embodied only the earlier emphasis on stream flow regulation (with its "navigation" justification) or contemplated broader purposes is unclear.

With respect to BLM lands, the Classification and Multiple Use Act of 1964 [18] lists "watershed protection" as one of the land management purposes when lands are classified for retention in Federal ownership.

The assumption underlying congressional policies for acquisition of private lands for "watershed protection" apparently was that Federal ownership would result generally in management practices and investments that had not been, nor were likely to be, undertaken by private landowners. However, the dereliction of the private sector with respect to watershed protection, which characterized the early part of the century, appears to have been largely superseded by improved watershed protection practices backed by state and Federal technical and financial assistance. Today, therefore, substantially identical watershed protection and management practices are conducted on both public and private lands.

Expenditures on private lands in the 11 western states, under watershed protection programs developed over the last 40 years, exceed the level of similar expenditures on public lands. Several reasons

[15] 16 U.S.C. § 475 (1964).
[16] 16 U.S.C. § 515 (1964).
[17] 16 U.S.C. §§ 528–531 (1964).
[18] 43 U.S.C. §§ 1411–1418 (1964), *as amended,* (Supp. IV 1969).



Timber cropping—clearcutting in strips on a mountainside—is designed to control water runoff while providing seed for forest restocking.

may account for this development. The early part of this century found cutover private forests, as well as large areas of nonforested land, contributing uncontrolled runoff and silt which aggravated flood conditions. However, as indicated above, watershed protection and soil stabilization programs, partly under the aegis of Federal financial and technical assistance, have since taken place.

If public lands are acquired or retained in Federal ownership for one or more other purposes, good husbandry dictates that management should provide a high level of protection for recognized watershed values. *In any event, critical watershed lands, designated or classified as such, must be retained in Federal ownership. Since watershed management practices are generally of equal quality on Federal and non-Federal lands, it is unnecessary to retain public land solely for watershed purposes, if it is not critical watershed land and if the land is chiefly valuable for a purpose for which we recommend disposal elsewhere in this report.*

There is little justification for using "watershed protection" as a *general* ground for land acquisition. While individual land ownerships may present particular problems, other state or Federal zoning or control devices are available to deal with them. *Therefore, Federal land acquisition as a dominant control technique is not necessary. Accordingly, we recommend that the authority conferred on the Secretary of Agriculture to acquire lands for watershed protection, as quoted above, should be restricted to critical watershed lands within the exterior boundaries of existing national forests.* The adoption of this recommendation, of course, would preclude the establishment of new national forests solely for watershed protection.

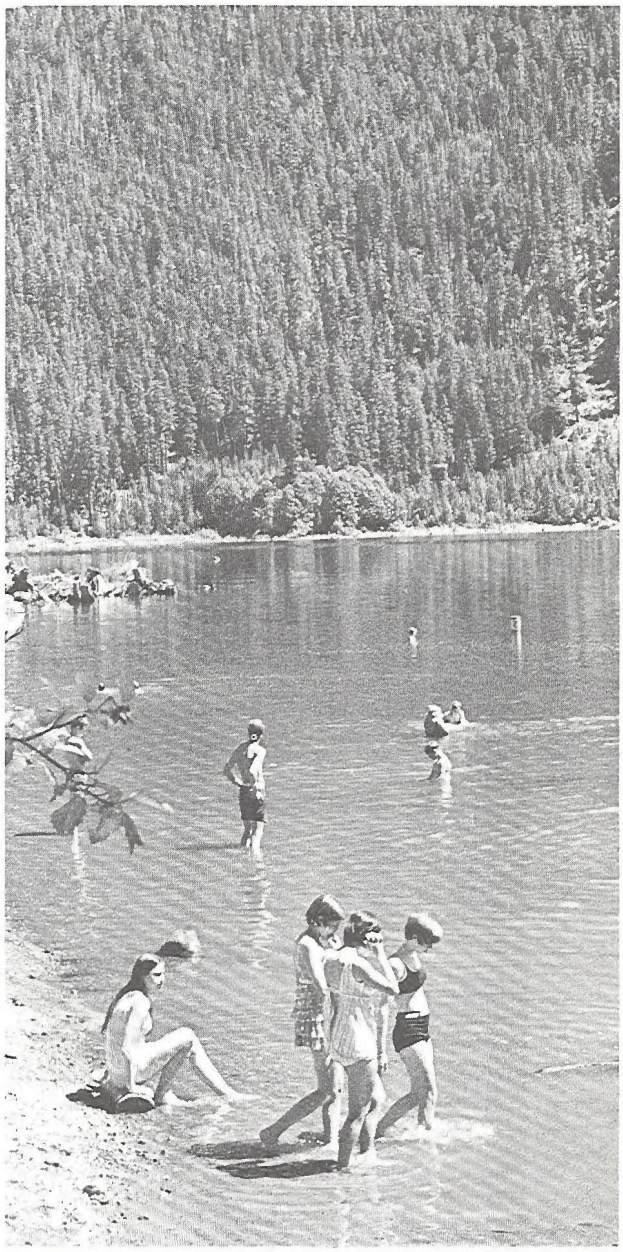
Water Resource Development Project Impacts

The Federal water resource development projects constructed by the Bureau of Reclamation and the Corps of Engineers, and the non-Federal projects licensed by the Federal Power Commission, have important impacts on public land uses and values. However, the basic statutory charters for the Bureau and Corps' programs are keyed almost exclusively to water resource development goals and objectives. The Federal Power Commission's authority is slightly broader, authorizing the licensing of projects which, in the judgment of the Commission, "will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of water power development; and for other beneficial public uses, including recreational purposes." [19] The latter phrase has been interpreted to include "conservation of natural resources, the maintenance of natural beauty, and the preservation of historic sites." [20]

Although none of the relevant statutory directives expressly direct the consideration of project impact on all public land values, the Water Resources Planning Act of 1965 declares congressional policy "to encourage the conservation, development, and utilization of water and related land resources of the

[19] 16 U.S.C. § 803(a) (1964).

[20] Scenic Hudson Pres. Conf. v. FPC, 354 F.2d. 608, 614 (2d Cir 1965), *cert. denied,* 384 U.S. 941 (1966).



A forest lake in summer.

United States on a comprehensive and coordinated basis." [21] Moreover, the agencies, as a matter of practice, generally take such land impacts into consideration.

Further, the recent National Environmental Policy Act, which we discuss in Chapter Four, contains directives to all Federal agencies concerning planning requirements for "major Federal actions significantly affecting the quality of the human environment" which will clearly have a broad impact on future water resource development project planning. Nevertheless, we believe it desirable to make specific recommendations concerning the consideration of water project impacts on public land values.

As to wildlife resources, the Fish and Wildlife Coordination Act [22] requires the Corps of Engineers, Bureau of Reclamation, and Federal Power Commission to "consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular state wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources, as well as providing for the development and improvement thereof in connection with such water resource development."

Resulting reports and recommendations of the Secretary and the state agency must be made a part of the report upon which the project is to be justified and given "full consideration." However, final decision is left to the construction or licensing agency by providing that "the project plan shall include such justifiable means and measures for wildlife purposes as the agency finds should be adopted to obtain maximum overall project benefits."

With respect to Bureau and Corps' projects, there are no general statutory guidelines, similar to the Fish and Wildlife Coordination Act,[23] dealing with the question of how the adverse impact of dams and reservoirs on other public land values are to be taken into account. However, as a general proposition, there is coordination between the construction agencies and the public land management agencies in the preliminary planning stages. Recently, this has taken the form of "impact studies" carried out by the Bureau of Land Management and the Forest Service in response to particular project proposals submitted by the construction agencies.

To the extent that conflicts between the proposed project and public land values are not resolved within the Department of the Interior or at the Bureau of the Budget, they are dealt with on an individual project basis by Congress in the legislative authorization process.

The Federal Power Act authorizes the Federal Power Commission to issue licenses for hydroelectric projects "upon any part of the public lands and reservations of the United States." [24] As to reservations of lands for particular purposes, however, the Act further provides that "licenses shall be issued within any reservation only after a finding by the Commission that the license not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservations." [25]

Under this approach, the Federal Power Commission is given the ultimate authority to decide whether a project having an impact on a Federal reservation shall be licensed, presumably even over the holding agency's objection (the role fulfilled by Congress for Bureau and Corps' projects), although the Commission must include such conditions in the license as the holding agency considers necessary.

Recognition of Public Land Values

> Recommendation 59: Congress should require federally authorized water development projects on public lands to be planned and managed to give due regard to other values of the public lands.

As pressures on the public lands increase, it becomes more important that greater consideration be given to the impact of water resource development projects on other public land values. Scarcely a project has been proposed to Congress or the Federal Power Commission in recent years which has not generated significant controversy because of its impact on public land values, e.g., Bridge and Marble Canyon Dams on the Colorado, High Mountain Sheep Dam on the Middle Snake, and Rampart Dam in Alaska, to mention only a few. Where Congress authorizes particular projects, as with Bureau and Corps' programs, it should be fully advised of public land impacts that would be caused by a proposed project, and the steps proposed to deal with them, along the lines of the Fish and Wildlife Coordination Act.

Consequently, *we recommend that Congress expressly provide that public land impacts be considered by the Bureau of Reclamation and the Corps of Engineers in planning and carrying out their programs, and require that project justification reports*

[21] 42 U.S.C. §§ 1962–1962 (Supp. IV, 1969).
[22] 16 U.S.C. § 662a (1964).
[23] 16 U.S.C. §§ 661–666c (1964).
[24] 16 U.S.C. § 797(e) (1964).
[25] *Ibid.*

submitted to Congress by those agencies clearly identify all potential project impacts on other public land values and contain express findings and recommendations with respect to such impacts. This would generally extend the principles and procedures of the Fish and Wildlife Coordination Act to the consideration of land values other than wildlife.

Similarly, *the Federal Power Act should be amended to (1) make it clear that public land values are to be considered in determining whether a project "will be best adapted to a comprehensive plan" for river basin development, and (2) require findings by the Commission and the inclusion of conditions designed to protect all important public land values, not just those on reserved lands.* This would give a clear statutory directive for what appears to be the FPC's administrative and judicial construction of the FPC's licensing responsibilities. Procedurally, it would require specific findings and conditions designed to identify and protect all special public land values, whether on reserved lands or the public domain.

Fish and Wildlife Resources

FISH AND WILDLIFE on the public lands, both game and nongame species, constitute an important national resource. Although about 37,000,000 hunting and fishing licenses, applying to public and private lands alike, were sold in the United States in 1967, the fish and wildlife on the public lands have great significance and meaning beyond that form of recreation.

Millions of people enjoy photographing wildlife, or observing and enjoying birds and animals as a part of their camping, hiking, picnicking or other outdoor activity. The importance of these nonconsumptive values will increase in the future.

In addition to reviewing the policies, laws, practices, and procedures applicable to lands administered by the traditional public land management agencies, the Commission was specifically charged to give equal attention to the Fish and Wildlife Refuge and Game Range System. There are 26.6 million acres of land under the jurisdiction of the Fish and Wildlife Service of the Department of the Interior.[1] Over 17 million acres of those lands are set aside and administered primarily for resident game species, with which our review is primarily concerned. The other nine million acres are largely in migratory bird refuges. Policies and programs of the United States under the Migratory Bird Treaty Act [2] were not considered, since Federal land ownership is of minor importance to development. However, policies applicable to resident wildlife on the Federal refuge lands established in support of the Migratory Bird program are included in this chapter. Our review focused on those states where public lands make up a sizable part of the wildlife habitat. Almost all of Alaska's 365 million acres of land are wildlife habitat of one kind or another, and 348 million acres of this area are still in Federal ownership. Some of the largest caribou and moose herds in North America use the public lands in Alaska. The marshes and muskeg and the river deltas of Alaska are the summer nesting areas for millions of North America's migratory waterfowl. The streams and rivers that flow to the sea are the spawning runs for much of the North Pacific salmon fishery.

In the lower 48 states, we concentrated on 20 states where public land constitutes 6 percent or more of the area. This included the eleven most western coterminous states where over 90 percent of the public lands (excluding Alaska) are located. Of the Federal land in those 20 states, 315 million acres are classed as big game habitat. These lands provide the principal habitat for between 40 and 48 percent of the big game populations in those states. Nearly all of the elk, bighorn sheep, mountain goat, moose, and wild turkey in these states are primarily dependent on the public lands.[3] At the same time, the lakes, streams, and rivers on Federal lands account for 45 percent of the cold and warm water fish habitat on the West Coast, 71 percent in the Mountain States, and 15 percent in the Eastern States.[4]

The Commission finds that Federal *land* policy in this field is generally unclear. Greater emphasis needs to be given fish and wildlife values in allocating public lands to various uses in order to assure that fish and wildlife resources receive equal consideration in public land administration. While great attention has been given to fish and wildlife policy, the failure

[1] Of the total acreage, 23.2 million acres is public domain land and 3.1 million acres acquired.

[2] 16 U.S.C. §§ 703–711 (1964).

[3] In 1966 about 8 percent of all game and 35 percent of the big game taken in the United States came from these lands.

[4] Colorado State University, *Fish and Wildlife Resources on the Public Lands,* Ch. V. PLLRC Study Report, 1969.

to relate that policy to public land policy is rooted in the divided jurisdiction of Congressional Committees. The recommendation we make in Chapter Twenty would eliminate the division and permit the two policies to be considered at the same time.

There are jurisdictional uncertainties between the states and the Federal Government that must be clarified before a good foundation for realization of the fish and wildlife potential of the public lands is established. In addition, a number of special problems require policy changes to bring the interests involved into better balance.

Clarification of Federal and State Authority

> Recommendation 60: Federal officials should be given clear statutory authority for final land use decisions that affect fish and wildlife habitat or populations on the public lands. But they should not take action inconsistent with state harvesting regulations except upon a finding of overriding national need after adequate notice to, and full consultation with, the states.

Under their general police powers, the states have traditionally regulated the taking and transport of fish and wildlife within their borders. Resting on well established law, such police powers have extended to the regulation of harvesting game on the public lands in the absence of conflicting Federal legislation. Equally well established, however, is the power of Congress to provide for the use and protection of its own public lands. In cases of conflict between the objectives of the two sovereigns, the supremacy clause (Article VI, clause 2) of the United States Constitution precludes state control over authorized Federal activity in furtherance of its public land programs.

Historically, the states have regulated the game population, and the Federal Government has managed the habitat. Conflicts have been few, and have generally been confined to situations where the Federal agencies have harvested game in disregard of state laws in order to protect public land values under their jurisdiction. The Supreme Court has sustained such Federal action.[5]

Increasingly, however, the line between the traditional functions has become shadowy. Since effective wildlife population management involves some degree of habitat management, the states are becoming increasingly concerned with programs of habitat management and with the effect of other public land activities on wildlife habitat. Nearly all states have developed programs to increase populations of fish and wildlife, to control populations of wild animals to prevent them from increasing to the extent that the natural food supply cannot support them; and to limit undesirable species of fish and animals. Some of this work takes the form of manipulating the habitat, and all of it is affected by existing habitat conditions.

Similarly, the Federal land managing agencies have developed policies and programs of their own on the lands they administer. Much of the habitat work they do on public land is the same kind of work that the states do or would like to do, and much of it is done cooperatively with the states. Other public land programs, such as timber production and harvesting and providing for use of grazing resources by livestock, affect the vegetative resources that also make up the wildlife habitat. In turn, wildlife population control in many cases is necessary to protect other public land resources and values.

Although the legitimate interests of both the state and Federal fish and wildlife programs have been on a theoretical collision course, administrative restraint and cooperation have generally managed to avoid major confrontations. However, in 1964 an opinion by the Solicitor of the Interior Department declared that "regulation of the wildlife populations on federally owned land is an appropriate and necessary function of the Federal Government when the regulations are designed to protect and conserve the wildlife as well as the land," and concluded that "this authority is superior to that of a state."[6]

The Supreme Court has not yet ruled on the matter of Federal harvesting in conflict with state law, except in cases where necessary to "protect" Federal lands. However, the Solicitor's opinion has been reinforced by a recent Federal Court of Appeals decision sustaining the killing of deer by Federal officials, without obtaining state licenses, as part of an experimental program on the Carlsbad Caverns National Park in New Mexico.[7]

Although the paramount legislative authority with respect to all public lands is in Congress, it thus far has only provided clear legislative support for Federal agency harvesting regulation that is inconsistent with state law in connection with the wildlife refuge system and the national parks. We see the legitimate issues here as being whether the states should be given controlling decisional authority with respect to some aspects of public land management and, if not, how they can play an important role along with the Federal agencies on public lands. The matters in question concern the setting of wildlife production goals on the public lands; habitat protection and enhancement programs; setting harvesting regulations; and licens-

[5] Hunt v. United States, 278 U. S. 96 (1928).

[6] 71 Interior Dec. 469, 473, 476 (December 1, 1964).

[7] New Mexico State Game Commission v. Udall, 410 F. 2d 1197 (10th Cir. 1969), cert. denied 396 U. S. 961.

ing hunters and fishermen in a manner that is consistent with the goals that are established.

We are convinced that this matter has developed into a major controversy because of the present lack of clear and meaningful goals in Federal law (which we recommend later in this chapter) for the management of public lands for fish and wildlife purposes.

Consequently, we recommend that the states generally should continue to exercise their traditional authority to license the taking and transport of game and to set season and bag limits. But we recommend also that the Federal agencies should be given clear authority, subject to fullest consultation with the state and careful consideration of the state's viewpoint, to carry out the following actions, even when inconsistent with state regulations, where it is necessary to accomplish clearly authorized land management objectives:

1. The establishment of more restrictive harvest regulations applicable to public lands, in order to prevent depletion of fish and wildlife on Federal lands or to prevent disturbances of species that are not being hunted.
2. The regulation of the location, time, and duration of entry and use of the public lands by hunters and fishermen, in order to protect public land resources and the interests of other users, to control hunter density and dispersions in the interests of safety, and to direct harvest pressures where they are most needed.
3. The modification of public land fish and wildlife habitat either for the benefit of fish and wildlife or, where necessary, for other multiple use land management responsibilities.
4. The determination and manipulation of populations and species to be produced on the public lands where significant impacts on the ecosystem are involved.
5. The harvesting of fish and wildlife where necessary to protect public land resources and values or the future food supply of the animals themselves.

Federal-State Cooperative Agreements

Recommendation 61: Formal statewide cooperative agreements should be used to coordinate public land fish and wildlife programs with the states.

In Chapter Three on planning, we stress the need for greater coordination with state and local governments. Our study indicates that there already exists a comparatively high degree of coordination with respect to fish and wildlife matters. But we believe that this coordination needs to be regularized and made uniform, and that close working relationships should be developed to implement the greater emphasis that we recommend for fish and wildlife management programs on the public lands.

At present there are at the local level numerous cooperative arrangements, both formal and informal, between the states and the public land agencies. But these arrangements generally require the states to work separately with each agency, or with less than all of them that should be involved, even when a joint Federal effort is arranged.

We suggest that a Federal-state fish and resident wildlife coordinating committee be established in each state, composed of members from all public land agencies and representatives of the Governor or interested state agencies. Functions of the committee would include:

The licensing of hunters by states is a tradition that should be continued.

(1) Coordination of habitat and population planning, including the identification, designation, and management of important wildlife habitat support areas.

(2) Development of plans and proposals recommending special seasons and supervised hunts on Federal lands to achieve production goals and protect public land resources.

(3) Development and recommendation of uniform standards for wildlife habitat classification, evaluation, and carrying capacity determination.

(4) Conduct of public meetings to obtain citizen views on significant fish and wildlife actions contemplated for Federal lands within the state.

The Definition of Management Goals

Recommendation 62: The objectives to be served in the management of fish and resident wildlife resources, and providing for their use on all classes of Federal public lands, should be clearly defined by statute.

The traditional jurisdiction of the states over the taking and transport of fish and wildlife, coupled with divided Congressional Committee jurisdiction referred to above, has resulted in the absence of Federal legislation enunciating wildlife management objectives for the public lands administered by the Forest Service and Bureau of Land Management for multiple use purposes. We believe this has at times heightened the disputes over jurisdiction between the states and Federal land administering agencies; and it has made Federal administrators reluctant to institute broader positive programs for fish and wildlife on public lands.

Except for statutory recognition of fish and wildlife as a purpose of sustained yield management in the 1960[8] and 1964 multiple use acts,[9] there is no statutory guidance as to the purposes to be served or how resources are to be allocated for fish and wildlife on the lands to which these acts apply. *The Federal Government has a responsibility to make provision for protecting, maintaining, and enhancing fish and wildlife values on its lands generally because of the importance of those values as part of the natural environment, over and above their value for hunting, fishing, and other recreational purposes.*

Protection and propagation of rare and endangered species of wildlife should be given a preference over other uses of public lands. The Federal Government formally assumed a national responsibility for protecting rare or endangered species of native fish and wildlife in the Endangered Species Act of 1966.[10] While this act was not designed primarily for the public lands, we believe its intent should be specifically adopted as one of the defined goals of public land management. Some areas of public lands have already been set aside to protect disappearing species, such as the California condor and the Kirtland warbler. Where certain areas of public lands are the only or best habitat of species that may be threatened with extinction, other uses of the land and resources should be foregone or restricted in the interest of protecting them.

[8] 16 U.S.C. §§ 528–531 (1964).

[9] 43 U.S.C. §§ 1411–1418 (1964), as amended, (Supp. IV, 1969).

[10] 16 U.S.C. §§ 668aa et seq. (Supp. V, 1970).

We believe that some provision should also be made to give recognition to species other than those considered to be "native". This would provide a statutory basis to afford appropriate protection and management for such animals as wild horses and burros and imported species such as pheasants.

Following preference to rare and endangered species, preference should be given to the support of those species for which the public lands provide a critical or significant portion of the habitat. Public lands make up the principal habitat for a large proportion and, in some instances, nearly the entire population, of some species of wild animals and fish. As mentioned before, mountain goats and sheep, moose, elk, wild turkey, and caribou depend heavily on the public land habitat year-round. Some species use public lands for critical summer or winter feeding or nesting areas. The Commission believes preference should be afforded species in this category in allocating public land resources, and in considering the extent to which other uses should be permitted or constraints be imposed on them for the benefit of fish and wildlife.

Game and nongame species of resident wildlife should be given equal attention in the administration of public lands. The Commission is concerned over the lack of attention given nongame species of wildlife in public land management generally, and in providing for public land use by people for purposes associated with the appreciation and enjoyment of such species. With few exceptions—and most of these have to do with nongame species considered to be in danger of extinction—the Federal land administering agencies devote relatively little resource management effort or attention to birds, mammals, and reptiles in this category. We believe the resulting imbalance in resource management policy must be redressed. *Hunting, fishing, and other forms of use and enjoyment of resident wildlife and fish should be given equal consideration in Federal public land programs, along with other uses of the public lands.* The United States should make its lands available to people for fish and wildlife use purposes under explicit management policies and programs with provision for protection of other uses.

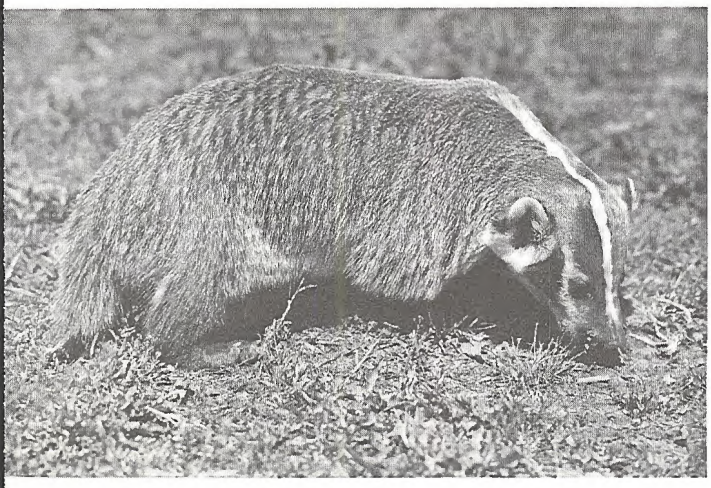
Fish and wildlife populations should be maintained at levels in consonance with the ability of the habitat to support them, including, where appropriate and necessary, stocking streams with fish. Public land vegetation should be managed so as to sustain wildlife population levels without artificial feeding, and, conversely, reduction programs must be instituted in case of overpopulation. These guidelines are essential for public land management programs in determining when wildlife populations are exceeding the carrying capacity of the land, and thereby encroaching on other values of the lands, and for allocating resources

to wildlife. There are no statutory guidelines of this type at present. Public land fish and wildlife management has not generally been carried on intensively enough to require that determinations of desired stocking levels be explicitly made for most species. We believe this will become increasingly necessary if fish and wildlife are to be properly considered in the growing competition for public land resources.

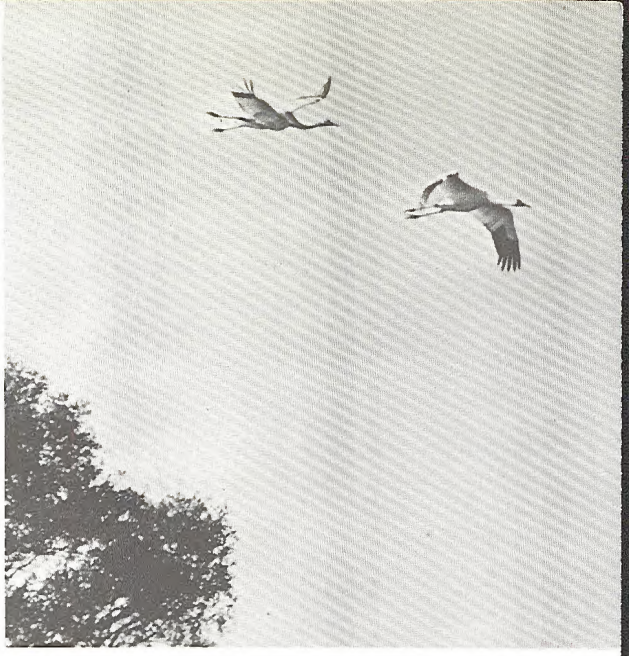
At the same time, we recognize the importance of fish and wildlife to outdoor recreation. We have concluded that the stocking of fish in streams and lakes on the public lands is consistent with our concept of a balance between wildlife and its habitat. Stocking may be necessary particularly in national parks and other heavily used areas where fishing pressure is high.

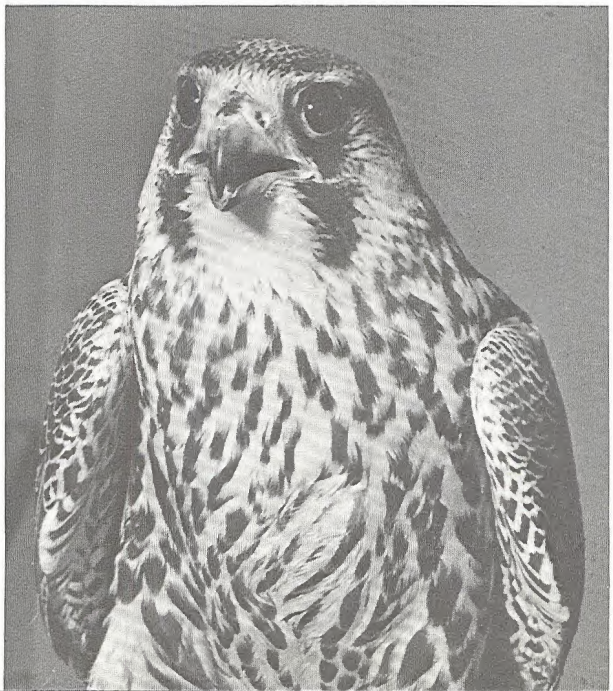
Public lands and waters should be classified for hunting, fishing, and nonconsumptive forms of wildlife use. More intensive use of public lands for these and related uses will require specific identification of areas where these uses are provided for and are intended to take place. Such classification will be an integral part of the comprehensive land use planning that we recommend in Chapter Three for all public lands in the future.

Public lands generally should be open to hunting

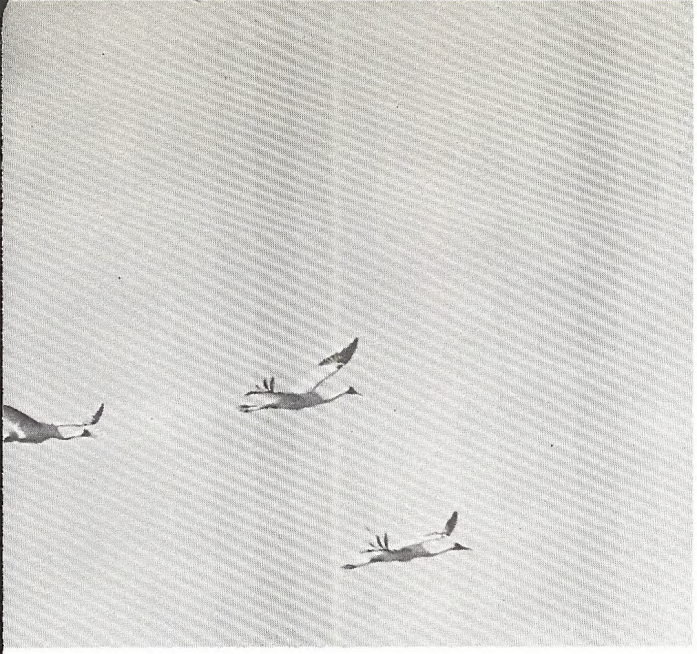


Nonconsumptive forms of wildlife recreation, such as bird watching and photography, are growing in popularity and deserve more consideration by public land managers. Non-game species (like the badger at left) should be afforded equal treatment with game species in public land management.

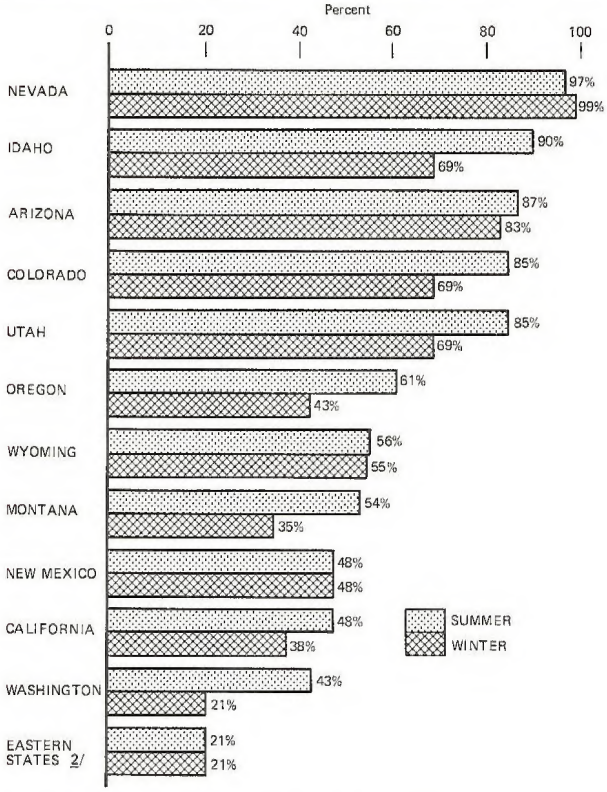




Preferential use of the public lands should be accorded disappearing species such as the bald eagle (far right), black-footed ferret (above), peregrine falcon (right), and the whooping crane (top photo).



PERCENTAGE OF BIG GAME 1/ POPULATIONS OCCURRING ON FEDERAL LAND, IN 11 WESTERN AND SELECTED EASTERN STATES 2/, DURING SUMMER AND WINTER SEASONS



1/ INCLUDES DEER, ELK, ANTELOPE, BEAR AND LESSER SPECIES

2/ AVERAGE FOR ARKANSAS, FLORIDA, MICHIGAN, MINNESOTA, NEW HAMPSHIRE, NORTH CAROLINA, SOUTH DAKOTA, VIRGINIA AND WEST VIRGINIA.

SOURCE: PLLRC STUDY, FISH AND WILDLIFE RESOURCES ON THE PUBLIC LANDS, TABLE 1, P. 58, 1969.

Some big game species depend heavily on public land habitat in most western states.

and fishing unless expressly prohibited by statute. While there is no controversy with regard to fishing, there has been substantial dispute over the general policy regarding the hunting of resident game on some classes of public lands. National forests and lands administered by the Bureau of Land Management are generally open to hunting, and we recommend that, barring overriding considerations, all such lands should be open for hunting. This is not the case with regard to other classes of public lands as discussed below.

To the extent possible, public hunting and fishing should be employed on multiple use public lands as the normal method to harvest or remove excess fish and wildlife that are not reduced by natural processes. However, if public hunting fails, Federal personnel should be utilized to achieve desired wildlife population levels. One of the objectives of maintaining and developing healthy populations of fish and wildlife on the public lands, and of carrying those populations at or near maximum levels permitted by natural habitat conditions, is to provide the recreation opportunity they afford through hunting and fishing.

Land management policy should support this objective by permitting maximum use and availability of the public lands wherever population excesses occur. Moreover, that management effort should in fact be directed at producing excesses of game species to provide the recreation opportunities they afford at a sustained level from year to year.

By statute, the national parks and monuments are generally closed to public hunting. One of the major purposes of park administration is to protect and preserve the wildlife and fish for public enjoyment and appreciation. The Commission considered the possibility that, through joint Federal-state arrangements, carefully supervised public hunting could be permitted in the parks during off season in order to remove population surpluses that occur at times. We rejected this proposition on the grounds that public hunting in the parks is inconsistent with park purposes and objectives. *When reduction of wildlife is required, it can and should be accomplished by Federal personnel in accordance with a program to achieve desired results in a particular park. Migratory bird refuges, which are open to hunting, have the same problems, but for different reasons. Accordingly, if the states involved are unwilling to establish "special" seasons, we suggest the same solution as for the overproduction of wildlife, i.e., reduction by Federal personnel.*

Public lands used for military purposes are in many cases closed to the general public for hunting purposes. Military personnel, on the other hand, are frequently permitted to hunt on such lands. While the Commission is aware of the need for security control over the entry and use of these properties, and also of the fact that any use of these lands must at certain times and for certain periods be prohibited, *we believe that the exclusion of the general public, when military personnel have general permission to hunt on these installations, is inequitable when military security or dangerous conditions are not involved.* Similarly, all other public land areas that are closed to fishing and hunting because of the nature of Federal activities should be reviewed and, wherever possible, opened to the public under such controls as may be required.

Operational Guidelines

Recommendation 63: Statutory guidelines are required for minimizing conflicts between fish and wildlife and other public land uses and values.

A number of basic issues in public land policy concerning fish and wildlife point to the need for a clear statutory framework of guidelines to assure that these values and uses are given proper con-

Lack of sufficient food supply to accommodate growing animal populations results in mass die-off.

sideration in day-to-day operational decisions. We believe such guidelines are an essential supplement to our recommended policy objectives for fish and wildlife on the public lands and that they should be included in statutory declarations of management policy.

The guidelines recommended below have been developed and framed primarily with the lands administered by the Forest Service and the Bureau of Land Management in mind. The general availability of these lands for various uses requires effective guidelines for allocating and managing them for each use. Some of the guidelines are, however, equally applicable to lands administered by the National Park Service, the Bureau of Sport Fisheries and Wildlife, and other classes of Federal lands administered for special purposes.

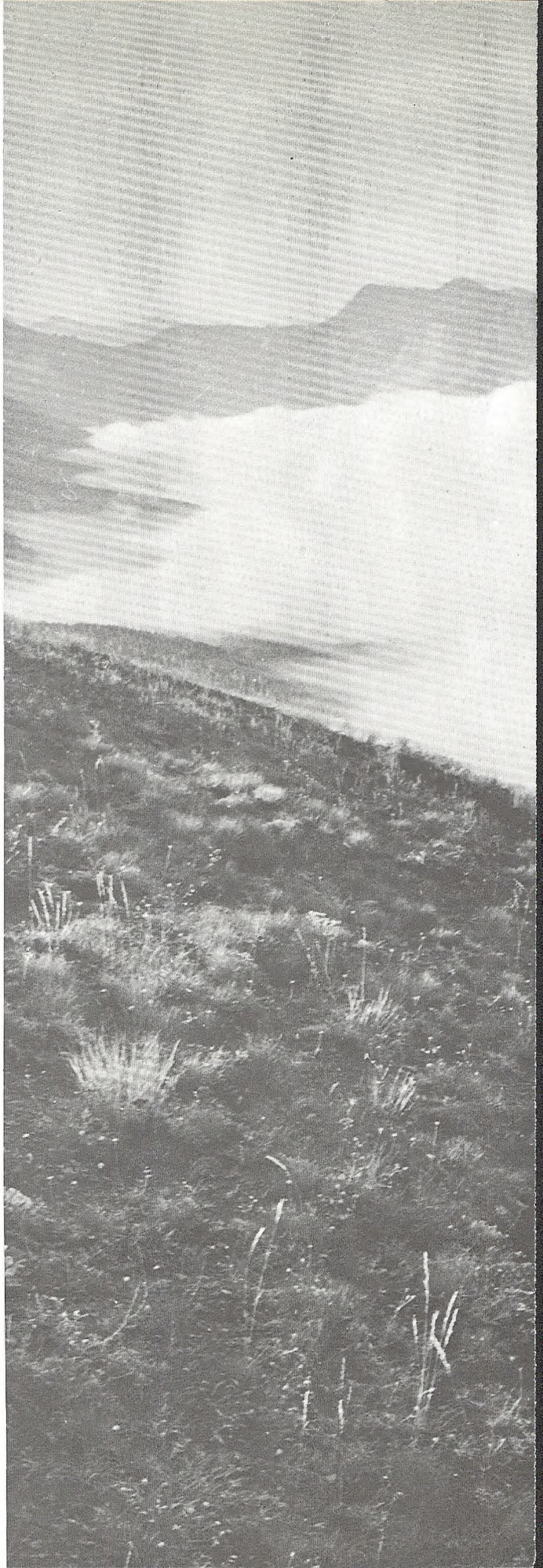
We believe guidelines are necessary for two major categories of policy: habitat management, and fish and wildlife protection and population control.

With regard to habitat management, we recommend that all public land uses and management practices that affect vegetative cover and surface water should, to the extent possible, be conducted in a manner designed to leave a quality habitat essentially unchanged in its overall capability for supporting fish and wildlife. We believe it is necessary to establish a habitat condition standard to assure continuous attention to the effect of such uses as livestock grazing, some forms of outdoor recreation, timber harvesting, mineral development, and road construction on the capability of the habitat affected to sustain dependent wildlife and fish species at appropriate stocking levels.

The guideline we recommend is a "no avoidable deterioration" standard. While this standard may be difficult to attain in some circumstances, we believe it is possible to adjust construction, logging, mining, and livestock use methods to achieve it under most conditions. The standard also provides a basis upon which mitigation or corrective work to recondition the habitat may be measured. Adoption of this guideline would not preclude habitat enhancement programs. It is merely a basis for preventing habitat deterioration.

All improvements installed on or across the public lands must be constructed in a manner to minimize the impact, so far as practicable, on normal fish and wildlife migration patterns. If some adverse impact is unavoidable, then it should be mitigated by compensatory actions elsewhere. This would extend the principle that has been applied to Federal water

One of the objectives in maintaining a good habitat for fish and wildlife on the public lands is to provide opportunities for fishing and hunting.



resource development projects. A number of issues brought to our attention involved the impact of other structural works on fish and wildlife migration patterns. These included the effect of range livestock fences and pipeline construction on the movement of wildlife. In addition, several of our studies pointed up the adverse impact that highway construction has on fish and wildlife movement patterns.

Portions of key public land fish and wildlife habitat destroyed or modified by other land uses or land development practices should be replaced in kind or with substitute resource equivalents. Some resource uses and developments unavoidably destroy, while others improve, the habitat conditions. Still others destroy the habitat for some species, but improve it for others. This is a guideline for mitigation of the possible adverse effects of such activities as water project construction, highway construction, land clearing and brush killing, timber harvesting, overgrazing, and intensive recreation use. It provides a basis for both corrective action and for imposing operating constraints to minimize the degree of habitat destruction. Corrective action could involve allocation of nearby alternative areas as priority zones for wildlife protection supplemental revegetation projects, or interim artificial feeding and protection until permanent measures are installed.

We are convinced that predator control programs should be eliminated or reduced on Federal public lands in furtherance of wildlife management objectives stated above. There are long standing programs of predator control that have substantially reduced and in some cases virtually eliminated certain species that are natural predators. While these programs may have been of some benefit to livestock operators in reducing cattle and sheep depredations by coyote, puma, cougar, and bear, they have upset important natural mechanisms for the population control of other species. As a result, some species, most notably deer, elk, and moose have increased in some localities to levels far above the capacity of the natural habitat to support them. Hunting has not always been sufficient to eliminate excesses. Habitat destruction and starvation have been the common results.

Land Classification

> Recommendation 64: Public lands should be reviewed and key fish and wildlife habitat zones identified and formally designated for such dominant use.

Areas so designated will, of course, include those in which endangered species are found and those in which critical habitat is provided. Formal commitment of specific areas where wildlife values will consistently receive dominant treatment in all re-

source decisions is an essential step in converting stated policy goals to operational form in the field. This is in accord with our concept of dominant use areas, in which other uses would be permitted as long as they are compatible with the dominant use.

Such classifications may be for key big game wintering or summering areas, choice bird nesting or feeding areas, or important resting and cover zones for migratory songbirds. The areas would not, in all probability, coincide with the administrative boundaries of presently designated public land grazing or ranger districts, nor would they be as large. Different areas would no doubt be designated for different species, and the areas may overlap. Key fish zones may consist of entire stream systems, certain stretches of streams, or in some cases the whole watershed. Areas should be designated in close cooperation with state agencies under the coordination procedure we recommend.

It follows that, once key fish and wildlife habitat areas have been identified, those lands should be retained in Federal ownership until changed conditions modify the emphasis and dominant use. Dominant use classification will assure continuity of public land programs which might be destroyed by disposal of such lands. Inasmuch as multiple use is still practicable and feasible, even in key fish and wildlife zones, we see no rationale for transferring such lands from Federal ownership either to state and local governments or to private owners.

Feral animals, like the wild burro and wild horse, should be given some form of statutory protection on the public lands.

On public lands not designated for fish and wildlife as the dominant use, fish and wildlife values should not, by themselves, justify retention. However, such values and others must be considered before determining that any lands should be transferred out of Federal ownership.

The authority of Federal land management agencies to acquire lands or interests in lands primarily for resident wildlife and fish management purposes, or to provide for public use of land for hunting, fishing, and wildlife observation, should be specified. Present authorities for Federal acquisition of lands primarily for wildlife purposes are confined to the purchase of land in support of the migratory bird program as elements of the Migratory Waterfowl Refuge System, and as special purchases in furtherance of the Endangered Species Act of 1966.[11]

Although the Federal Government administers some specially designated areas primarily for the benefit of species other than migratory birds, such as the Kenai Moose range, these areas were for the most part set aside and reserved from the public domain.

We believe the acquisition of private property primarily for resident wildlife and fish management, or to provide public use areas for hunting, fishing, and wildlife observation, is properly a function of the states and not of the Federal Government. However, *in eliminating privately owned property within national forests and national parks, priority should be given to the acquisition of land suitable for resident game and fish management purposes.*

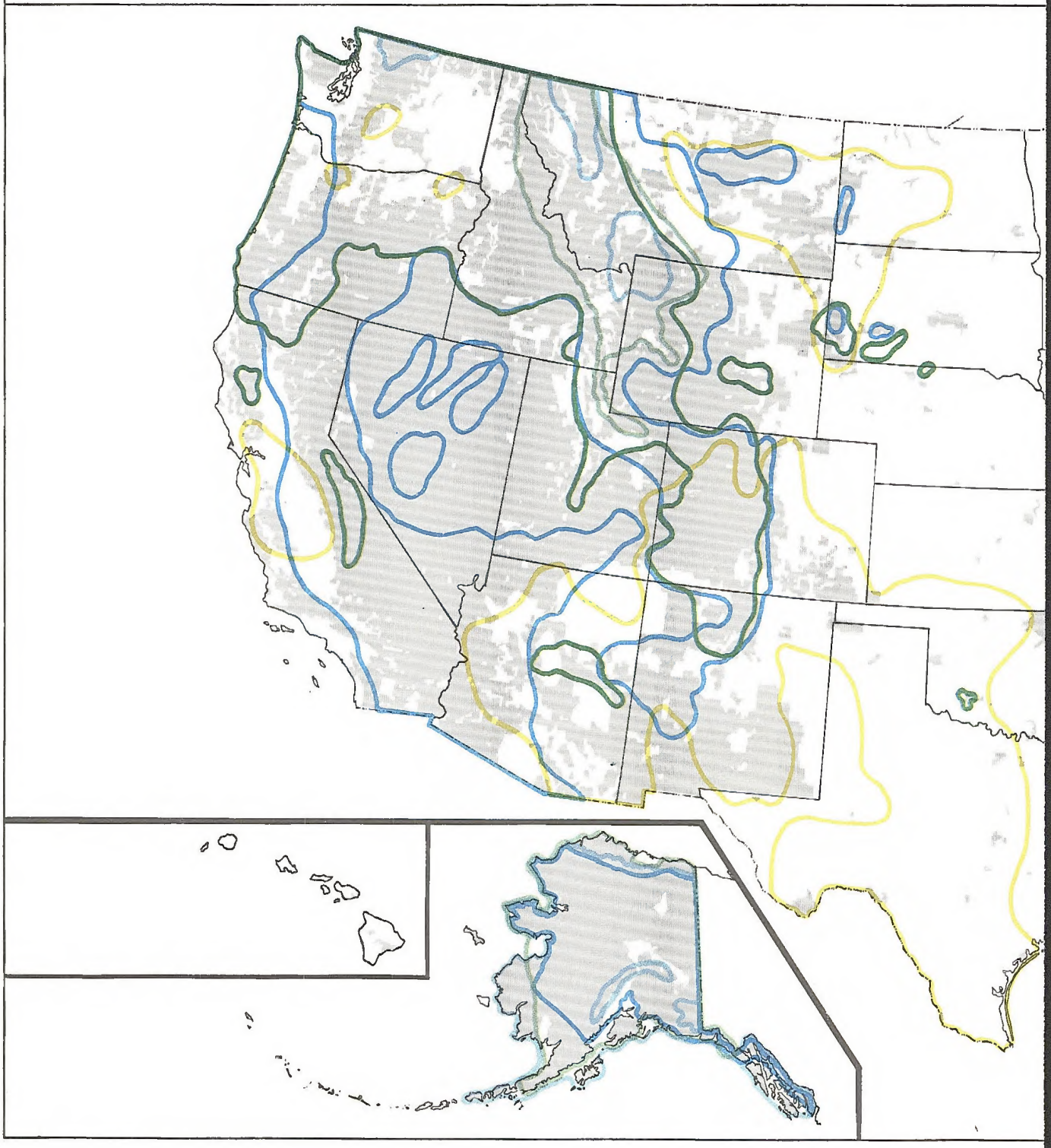
When a decision is made to dispose of public lands chiefly valuable for other purposes, *rights generally should be retained to protect fish and wildlife values, including public hunting and fishing.* However, private owners should be permitted to impose reasonable conditions on public use, to levy reasonable charges, and to have the right to close the land where hunting and fishing would be incompatible with other uses to which the land has been put. We note the fact that many states are finding it desirable to lease access to private lands for hunting and fishing to counteract the practice of "posting" private lands. The Federal Government should not contribute to the problems of the states by making it possible for additional areas to be posted against hunting and fishing where compatible with other uses.

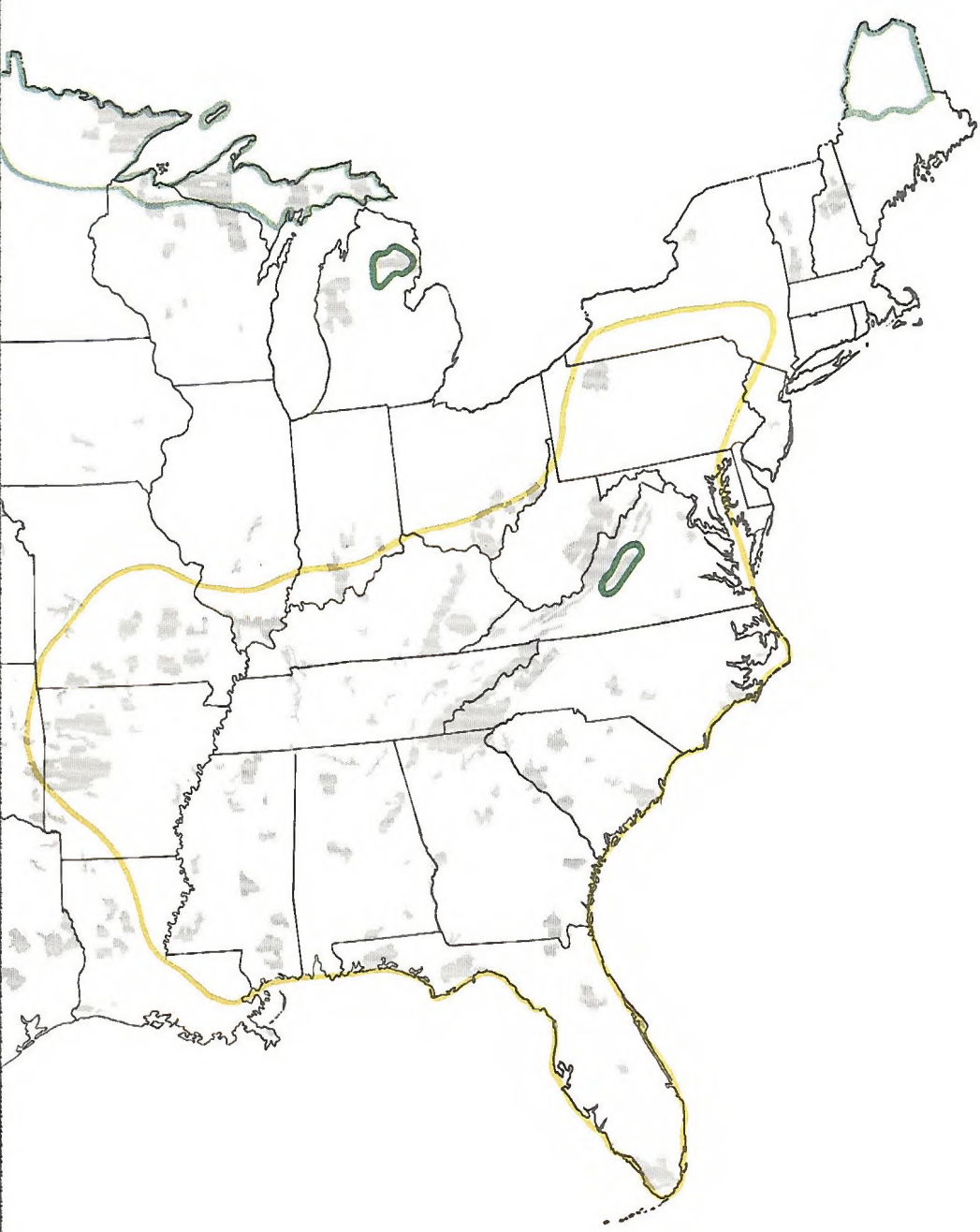
Hunting and Fishing Use Fees

Recommendation 65: A Federal land use fee should be charged for hunting and fishing on all public lands open for such purposes.

[11] *Ibid.*

THE NATIVE RANGE OF SOME WILDLIFE IS CLOSELY RELATED TO PUBLIC LAND OWNERSHIP





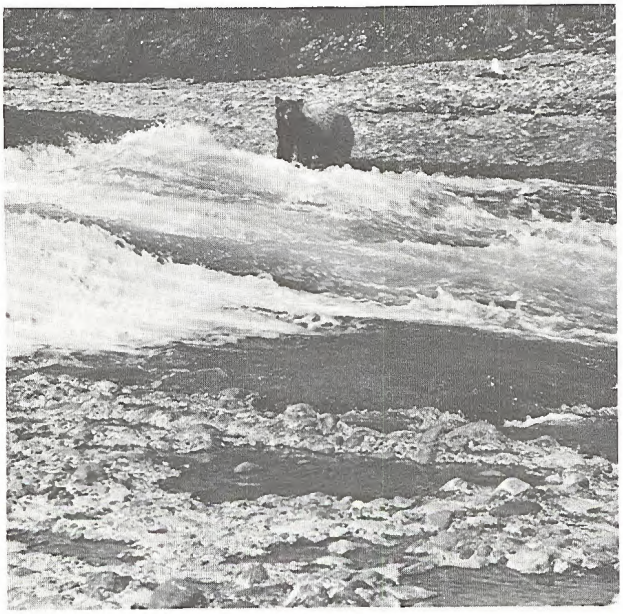
In Chapter Twelve we recommend that a general land use fee be charged for the recreational use of public lands. It is particularly appropriate that those who use the public lands to hunt and fish should pay an additional nominal fee for this special privilege. Not only do they benefit from the general availability of the public lands for their use and enjoyment, but Federal tax dollars have been spent for numerous projects and improvements on public lands which benefit hunters and fishermen. They benefit from the habitat protection and management programs of the administering agencies, and the Commission has endorsed increased efforts in the future.

The charging of fees for using lands and waters for hunting and fishing is a growing practice with private landowners. Charges are levied for day use, as well as for leases to individuals or groups who pay for seasonal use. Some states also charge use fees for hunting and fishing on state lands.

Except for a law applicable only to military installations,[12] present statutes governing the administration of public lands contain no requirements or guidelines for charging fees for hunting and fishing. Some Department of Defense units charge use fees for hunting and fishing, but the policy is not uniformly in force at all military installations.

[12] 16 U.S.C. § 670a (1964).

Public lands provide the key habitat for many species of game, as the Alaskan brown bear, wild turkey, chukar partridge and mountain goat, shown from left to right. The support of such species should be given priority in allocating public land habitat.



Some states presently require hunting and fishing license holders to buy a special stamp to hunt or fish on some Federal lands within the state. Fees that are collected are regarded as state funds. *We believe this practice should be discontinued.*

Our proposed fee to hunt and fish on the public lands is not a substitute for the licensing function of the states. It is intended only as a reasonable charge for the privilege of using the public lands to hunt and fish, and as partial support for the public cost of access, development, protection, and habitat work performed for the benefit of these users.

Congress should provide clear guidance on such matters as the method of collection, standards for setting and adjusting the amount of the fee, and the disposition of receipts. The Commission favors the fee collection method used now by the Federal Government in selling the Federal migratory waterfowl stamp, which is sold at post offices in each community, or making permits available by retailers authorized by states to sell hunting and fishing licenses. The Federal tag or stamp, affixed to the hunting or fishing license, would be evidence of purchase.

Fees could be varied to recognize differences in the quality of hunting and fishing opportunities on public lands, or a uniform nominal fee could be adopted. The Commission favors, on an experimental basis, an initial system of uniform fees with variations for the types of fish and game. This would be similar to the variable pricing of fishing, small game, and big game licenses used by nearly all of the states.

Administering agencies should institute positive programs to control hunter and fishermen density and

to direct harvest pressure on public lands. If habitat management and wildlife population protection and enhancement are to be given the kind of increased emphasis and recognition in public land management that we recommend throughout this chapter, we believe the administering agencies will have to initiate much more effective programs to control hunter and fishermen dispersal and density. With permits being required, this type of control will be possible.

Overcrowding of streamsides and lakes lowers the quality of the surroundings and the fishing experience. Over-concentration of hunters has the same effect on the quality of the experience and poses very high safety hazards as well. The need to secure hunting pressure in remote areas or areas where wildlife population is excessive will require specific programs, such as special bag limits worked out with the states.

Standards for Cost-Sharing

Recommendation 66: The states and the Federal Government should share on an equitable basis in financing fish and wildlife programs on public lands.

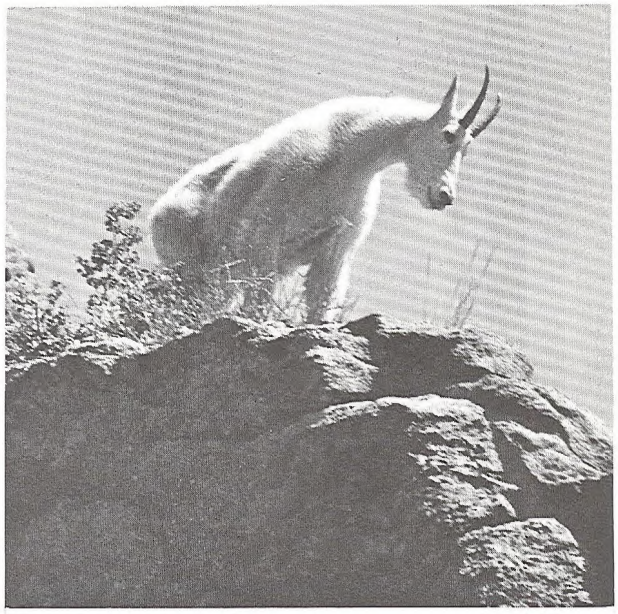
Existing statutes provide no guidelines for the respective responsibilities of the states and the Federal Government for financing work done on public lands for fish and resident wildlife habitat improvement and for population surveys, control, and stocking. Generally, the states finance such programs on all lands, both public and private, with Federal assistance from the public land agencies on the lands for which they are responsible.

However, the absence of guidelines in Federal law has led to inconsistencies in the sharing of costs in the various states with regard to work done on Federal public lands. Present cost-sharing practices vary with each land managing agency and with the different states that work with each agency. Some agencies share equally with the states in the cost of habitat work on Federal land. In some cases, states pay all of the cost of certain habitat work and fish restocking on Federal lands.

For some time the Federal Government has provided general aid to all states to assist them in financing the cost of fish and resident wildlife work. Revenues from Federal excise taxes imposed on the sale of arms, ammunition, and fishing tackle are made available to all states to finance up to 75 percent of the cost of projects the states undertake for the benefit of fish and wildlife.[13] These projects are undertaken on all classes of land ownership, including Federal lands.

In recognition of the continuing role of both the states and the Federal Government relative to fish and wildlife on public lands, it is recommended that uniform cost sharing standards should be developed and applied for programs on all public lands generally open to hunting and fishing. Such standards should take into account the objectives of the Federal Government in contributing to fish and resident wildlife values through its land ownership programs, the

[13] Provided under the Dingell-Johnson and Pittman-Robertson Acts, sometimes known collectively as the Federal Aid Program for Fish and Wildlife Restoration, 16 U.S.C. §§ 667–669b, 669c–669i and §§ 777–777k (1964).



Collection of the Federal land use fee can be handled much the same as the selling of migratory waterfowl stamps, which are sold at post offices.

jurisdictional interest of the state, and distributions otherwise made under the Federal aid program.

Nonresident Discrimination

> Recommendation 67: State policies which unduly discriminate against nonresident hunters and fishermen in the use of public lands through license fee differentials and various forms of nonfee regulations should be discouraged.

With few exceptions, states charge nonresidents higher fees than residents for hunting and fishing licenses, tags, permits, and stamps. In states where public lands are important for hunting and fishing, this practice effectively favors residents over nonresidents who may want to hunt on Federal public lands within the state.

The types of licenses, special tags, and permits issued by the individual states vary considerably. Of the 23 states that sold separate small game permits to both residents and nonresidents in 1966, the fees ranged from $1.00 to $5.50 for residents and $4.35 to $25.00 for nonresidents. The average differential was $14.67. For big game, 13 states sold a comparable permit to both residents and nonresidents in 1966. Costs to residents ranged from $2.00 to $13.00; costs to nonresidents ranged from $20.00 to $100.00. The average differential in this case was $27.15. In addition, states often require special tags and permits for individual species, particularly elk, deer, antelope, and bear, which increase the differential between resident and nonresident costs. The cost of big game permits and licenses and the disparity between resident and nonresident are greater in the 11 Western State region than elsewhere in the United States.[14] Generally, the same conditions prevail with respect to fishing license fees, although the level of charges for both residents and nonresidents is substantially lower than it is for hunting.

All citizens share a common heritage in the public lands, just as they bear the common burden of maintaining, protecting, and developing these properties through their Federal tax dollars. No one should be granted a cost advantage to hunt and fish on the public lands due solely to his place of residence.

The Commission recognizes that the states depend heavily on the revenues from license sales to support the cost of administering enforcement and other elements of their fish and game programs. Moreover, we acknowledge that in some cases nonresidents present special enforcement and rescue problems because of their unfamiliarity with the area. A reasonable differential for nonresidents is justified on these grounds. However, to the extent that such unusually high differentials may have been used as revenue raising vehicles to compensate the states for added burdens caused by nonresidents using Federal lands which yield no tax revenue, implementation of our recommendations in Chapter Fourteen for equitable payments-in-lieu-of taxes should eliminate the need for further reliance on this practice.

Some states also have other nonfee laws, regulations, or practices, which discriminate against nonresidents or effectively favor residents with respect to hunting and fishing on the public lands.[15] Such restrictions and exclusions are unjustified.

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[14] Colorado State University, *Fish and Wildlife Resources on the Public Lands* App. Table 41. PLLRC Study Report, 1969.

[15] For example, there is a statutory prohibition in Colorado against nonresident hunting of mountain sheep, mountain goats, and buffalo (most mountain sheep and mountain goats are found only on the national forests in Colorado); in Montana, a nonresident may hunt big game only if accompanied by a resident possessing a big game license; in South Dakota, nonresidents may not hunt migratory waterfowl; in Wyoming, nonresidents must be accompanied by a licensed guide or a resident hunter with a guide permit when hunting elk, deer, bear, moose or mountain sheep in a national forest, national park, or national refuge.

In Nevada, nonresident deer hunting tags may be limited in number, while the tags of residents are not so limited. Nonresident hunting and fishing licenses are similarly restricted in number in Wyoming. In Arizona, only residents may apply to hunt buffalo, and there are special permit hunts for which only residents are eligible.

Because of the mobility of our population today, the discriminatory effect of the various state practices on the users of public lands is heightened in two ways. Such practices discourage citizens from traveling to other states to hunt or fish on the public lands. And as greater numbers of out-of-state people do purchase nonresident licenses so they may fish or hunt, the discrimination is felt by more and more citizens.

We believe the elimination of both kinds of unreasonable discrimination against nonresidents is necessary if the public lands are to serve all citizens of the nation equally and contribute effectively and fairly to meeting the growing demand for hunting and fishing opportunities.

The present situation appears so discriminatory as to raise constitutional questions. While the courts ultimately may rule on these issues, we believe it essential to adopt additional means of discouraging these practices. *We recommend, therefore, that existing Federal programs which provide financial support for state fish and wildlife programs, as well as the new Federal cost-sharing program which we recommend for cooperative improvement of public land habitat, be conditioned upon the states revising their fee and licensing provisions to remove unreasonably discriminatory differences between residents and nonresidents.* We also encourage the states to cooperate in reaching agreement among themselves on reasonable differentials based on uniform principles in both fee and nonfee regulations.

Programs that control predators, as the bobcat (above) and the coyote, should be eliminated or reduced on Federal lands.

Intensive Agriculture

IN THE FIRST HALF of the 19th century, public lands were made available for sale into private ownership. This policy, which was directed at the goals of land settlement, widespread private ownership of land, and the development of a strong agrarian base for the country's economy, provided for a substantial national sufficiency in the production of food and fiber. But it was not until most of the land east of the Mississippi had been settled that a public land agricultural policy was established.

The Homestead Act of 1862 [1] was the first of a number of agricultural land laws that made public lands available at a nominal price or without money payment to those who would develop the lands for farming. When the Homestead Act was passed, the frontier thad crossed the Mississippi River. The provisions of the Act were appropriate for agricultural settlement in the eastern portion of the Great Plains. A settler could obtain 160 acres of land if he could demonstrate that he had settled and farmed the land for a period of 5 years.

As settlement moved further west, however, the increasingly arid conditions led to the need for changes in public land policy if agricultural settlement of the public lands was to be feasible. In his famous report of 1878 on the arid lands, John Wesley Powell noted the need for policies that would recognize that the requirements for successful farming in arid and semiarid regions were different from those of the more humid regions where the requirements of the Homestead Act could be met. Powell recommended that land be made available in units of 80 acres where irrigation was possible and 2,560 acres where water was not available, instead of the 160 acres available under the Homestead Act.

Changes were made in public land policy. The Desert Land Act of 1877 [2] provided for land to be made available at a nominal price to those who would settle the land and irrigate it. A settler could obtain 320 acres and a husband and wife could each file for 320 acres. The Carey Act of 1890 [3] provided for grants of irrigable land to the states. These acts were not sufficient to keep pace with the changes in American agriculture. After the turn of the century, the Reclamation Act of 1902 [4] introduced a new era of reclamation homesteads; and the Stock Raising Homestead Act of 1916 [5] made it possible for a settler to obtain 640 acres of nonirrigable land. But these public land laws also failed to keep pace with the needs of realistic agricultural production.

Water is, and always was, the key to agriculture in the arid and semiarid regions of the West. Where no water was available for irrigation, the size of a successful farm had to be several times that of one in the Midwest. Aside from raising livestock, which often required thousands of acres, only dryland farming techniques can be used and these require that considerable acreages be fallow each year; and the yields are lower than in the humid regions. In valleys where water was readily available for irrigation, on the other hand, successful farms could be comparable in size to those of the Midwest, or even smaller in some cases. But as the opportunities for irrigation became more remote from available water supplies, small farms could not, by themselves, support the investment required to get water to the land.

The agricultural settlement laws have served the country well. More than 287 million acres of land were granted or sold to homesteaders alone. But we believe that the changes that have taken place in American agriculture and in the stage of development of the public land areas require major changes in public land policies for intensive agriculture.

Replacement of Obsolete Laws

Recommendation 68: The homestead laws and the Desert Land Act should be repealed

[1] Act of May 20, 1862, 12 Stat. 312 (now codified in scattered sections 43 U.S.C. § 161 et seq. (1964)).

[2] 43 U.S.C. §§ 321–339 (1964).

[3] 43 U.S.C. §§ 641–647 (1964).

[4] 43 U.S.C. §§ 371 et seq. (1964).

[5] 43 U.S.C. §§ 291–301 (1964).

and replaced with statutory authority for the sale of public lands for intensive agriculture when that is the highest and best use of the land.

It has been estimated that from 1950 through 1967 only about 57,000 acres per year were patented in the 17 most western states under the homestead laws and Desert Land Act.[6] During the 1950s, 86 percent of the applications under the homestead laws and 83 percent of the applications under the Desert Land Act were denied. Furthermore, when entry was allowed, the applicant, known as an "entryman," had no more than a fifty-fifty chance of being able to meet patent requirements for obtaining legal title. When these figures are compared with the 275 million acres homesteaded between 1781 and 1934, it becomes apparent that the era of homesteading is over and that the laws no longer serve as a viable mechanism for transferring public lands into private ownership for agricultural purposes. Nearly all of the public land suited to agriculture, as visualized when the homestead laws, including Indian homestead and allotment acts, and the Desert Land Act were passed, has already been transferred into private ownership.

The agricultural land laws have also been subjected to misuse because for years they were the only major land disposal laws available to private citizens. Although the temporary Public Land Sale Act of 1964 [7] provides a means for an individual to obtain public lands right now, many citizens have attempted to use the agricultural land laws to get title to land for purposes that were not provided for in other public land laws.

We can find no basic reason for maintaining the kind of agricultural settlement policies embodied in the homestead laws, including provision for reclamation homesteads, Indian homesteads, and the Desert Land Act. The Commission makes no judgment, neither favorable nor unfavorable, concerning the merits of an urban-to-rural migration, or about measures that might accomplish it. But it does believe it to be indisputable that the agricultural use of Federal lands can provide little if any significant support for effecting such a turn-about in the movement of the Nation's population. A comparison of the area required to maintain a farm family with an income greater than the poverty level and the total area of public lands potentially suitable for agriculture suggests that agricultural settlement policies could have little effect relative to the expected increase of 100 million in the country's population between now and the year 2000.

We see no reason, however, to hold lands in public ownership if they are potentially high quality agricultural lands and would, if in private ownership, normally be used for agricultural production. If a parcel of land can be used for farming and produce crops or other products that can compete on favorable terms with those from lands already being used for farming, we believe it is contrary to the principles of good land use to keep such lands from agricultural use if they do not have higher values in public ownership.

Some persons, pointing to national surpluses of certain agricultural products and to massive Federal agricultural subsidy programs, have argued that there is no need for a public land agricultural policy. The Commission finds that these arguments are faulty. The methods and organization of agricultural production are constantly changing and this results in shifts in the regional location of agricultural activity. To resist such change by not permitting new lands suitable for agricultural production to be used for this purpose can only lead to inefficiencies in our agricultural system and to an increased need for subsidy programs. If it is possible, for instance, for a farm enterprise to bring Federal land under cultivation and offer farm products at prices comparable to those of national and regional markets, then we believe the land should be used for farming in the interests of efficiency and consumer welfare.

The effect of agriculture on regional economic development is also an important consideration. We take note of the fact that a shift in land use to intensive agriculture from a less intensive use such as grazing will result in an increased level of economic activity in a region.[8] Not only will the users of the land have increased incomes from the more intensive use, but this will spread through the regional economy and indirectly affect the incomes of grocery stores, service stations, equipment suppliers, and other enterprises.

We believe that a policy for agricultural use of the public lands can be based, at least in part, on these regional economic effects. Public land policy should not discriminate against the possible economic growth of those regions with Federal lands that have become valuable for farming under today's conditions. If the lands can compete under modern technology in normal markets, those regions where they are located should be allowed to develop in a manner parallel to that of the eastern and midwestern farming regions.

The Congress may deem it advisable to prohibit subsidy payments under various general agricultural programs when public lands are sold for intensive agriculture. It is impossible to draw a firm conclu-

[6] n. 2, supra.

[7] 43 U.S.C. §§ 1421–1427 (1964).

[8] Consulting Services Corporation, *Impact of Public Lands on Selected Regional Economies*, Ch. III. PLLRC Study Report, 1970.

sion on this matter because premises for the conclusion are not known. We cannot contemplate what farm program will be in effect even next year. Certainly, we cannot guess with any accuracy as to product needs in the future, especially when we consider regional as well as national needs.

Reclamation Law

We recognize that the Reclamation Law [9] is no longer necessary as an instrument for the development of irrigated public lands. However, although the Reclamation Law of 1902 was enacted as a public land law, today it has ramifications far beyond that narrow scope. Reclamation projects provide multiple benefits, including water power, recreation, flood control, and water for municipal and industrial purposes, as well as for irrigation. Accordingly, we make no broad recommendation concerning the type of reclamation law that should govern Federal development of irrigated lands in the future, and instead recommend that the National Water Commission address itself to this question.

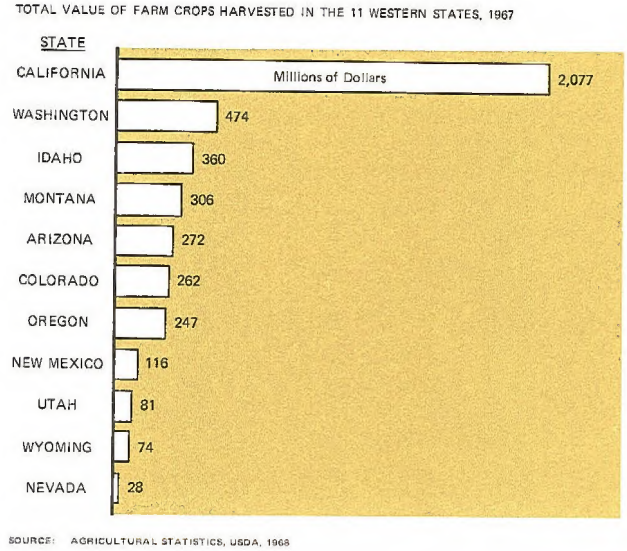
The Sale of Public Lands for Agriculture

> Recommendation 69: Public lands should be sold for agricultural purposes at market value in response to normal market demand. Unreserved public domain lands and lands in land utilization projects should be considered for disposal for intensive agricultural purposes.

Although only relatively few acres of public lands have been transferred into private ownership in recent years under the agricultural land laws, attempts to obtain such lands were made for rather substantial areas. We believe that this demand for public lands has been engendered in large part by the fact that these lands are available at a very low price if other legal requirements can be met. In other words, the demand for public lands under the agricultural land laws in recent years has been stimulated by the artificially low price of these lands.

We believe that this condition is inconsistent with good land use planning and development and that it should not be permitted to continue. We propose, therefore, that sales of public lands for agricultural purposes be treated much the same as sales of other lands or resources. Lands should be sold only when a market demand exists in the local area of the lands and the potential purchaser or purchasers are willing to pay the fair market value of the lands, as determined by local conditions. If regional demands for

[9] n. 4, supra.



The value of farm crops contributes substantially to the income of western states.

agricultural lands do not exist under these conditions, we believe it is in the best interests of the regional and local people and governments for the land to remain in public ownership.

We note the extent to which agricultural land use patterns have changed over the years with changes in the use of machinery, fertilizers, and irrigation. It is clear that the process of making land available for agriculture must be dynamic to meet these changing conditions. If the market is to serve as a guide to the area of lands to be transferred out of public ownership, the process of land classification must be repeated from time to time to reflect changes in market conditions. Whether or not sufficient market demand exists to make it advisable to offer public lands for sale will be a matter of judgment and will vary from time to time and place to place.

Market value of land was not a consideration in the disposal of public domain lands under the settlement laws, *i.e.*, the homestead laws, the Desert Land Act, and the Indian homestead and allotment laws.[10] However, the temporary 1964 Public Land Sale Act authorizes the Secretary of the Interior to dispose of lands that have been classified as chiefly valuable for agricultural purposes through competi-

[10] The payment of a small fee is required when application for entry is made under the homestead laws, but no fee is required for Indian homestead applicants. The Desert Land Act requires only the payment of the nominal sum of $1.25 per acre and proof that at least $3.00 per acre has been expended on reclamation and development. Reclamation homesteaders do not pay for their land, but must pay the construction charges apportioned to the irrigable area of their entry up to the limit of their ability to pay. (For the Indian Homestead Act, see 43 U.S.C. § 189 (1964) and for the General Indian Allotment Act see 25 U.S.C. §§ 334–336 (1964)).

tive bidding at not less than the appraised fair market value in tracts of up to 5,120 acres.

There will be vast areas in which the higher use for Federal lands will not be agriculture; for example, national park use of Federal lands in our view will always prevail over agriculture. Likewise, the national forests, national wildlife refuges, and other public lands withdrawn or reserved for specific purposes should generally not be transferred out of public ownership for agricultural purposes. On the other hand, we find no good reason why lands purchased by the Federal Government for so-called land utilization projects, many of which now make up the national grasslands, should not be made available for intensive agriculture under the same conditions as the unreserved public domain lands.[11]

The argument is sometimes made that public lands, particularly those purchased by the Federal Government when they were in a rundown and eroded condition, should not be permitted to be farmed again. It is said that the land would be overused and would again become rundown and eroded. We do not find this to be a substantial argument. Government assistance programs that have been instituted since the 1930's, such as those of the Soil Conservation Service, help farmers to maintain lands in good condition. Such programs are, we believe, sufficient insurance against a repeat of the "dust bowl" conditions that led to the acquisition of much Federal lands.*

The Commission recommends that leaseholds be used for Federal lands only when those lands must be retained for national objectives other than agricultural production. We take no exception to the proposition that if lands needed by the Federal Government for national programs, such as the wildlife refuges, can be used temporarily for agriculture without compromising the primary purpose of the area, they should be so used under lease. This approach would make it possible to lease lands at their market value when a regional demand exists, but the lands would remain under the control of the Federal Government. Whenever their use for agricultural purposes interferes with the primary purposes for which the lands are held, the lands should not be leased.

This approach would give the public agencies considerable flexibility in making lands available for agriculture so as to fit this use in with other uses of the land. At the same time, it would provide private citizens with an opportunity to obtain the use of some classes of public lands from time to time although, of course, this use would not be permanent.

Role of the States

> Recommendation 70: The states should be given a greater role in the determination of which public lands should be sold for intensive agricultural purposes. The state governments should be given the right to certify or veto the potential agricultural use of public lands but only according to the availability of state water rights. Consideration should also be given to consistency of use with state or local economic development plans and zoning regulations.

There have been two eras in the identification of Federal lands suitable for intensive agriculture. In the system used prior to the enactment of the Taylor Grazing Act in 1934,[12] the potential "applicant" identified and filed on the lands he wished to enter. In the system used since 1934, and as refined in the temporary Classification and Multiple Use Act of 1964,[13] the potential entryman can still identify lands for entry, but the Federal Government, through the Bureau of Land Management, must classify the desired lands as more suitable for agricultural purposes than for other purposes before entry will be allowed.

Two significant problems arise in this connection. Public land agency personnel may not be in a good position to judge the suitability of public lands for agricultural purposes, and they are clearly not in a good position to evaluate the impacts of agricultural development on state and local government.

To obtain greater objectivity and expertise, the Commission proposes that state institutions with demonstrated competence in the agricultural sciences should be consulted by Federal agencies concerning the suitability of Federal lands for intensive agriculture. This work would be an extension of the kind of research being conducted on a routine basis by the state agricultural experiment stations and the programs of the Federal Extension and Soil Conservation Services. This process will not make the land available for agricultural entry; it would only constitute a first step in determining whether or not disposal for agricultural use would be ordered.

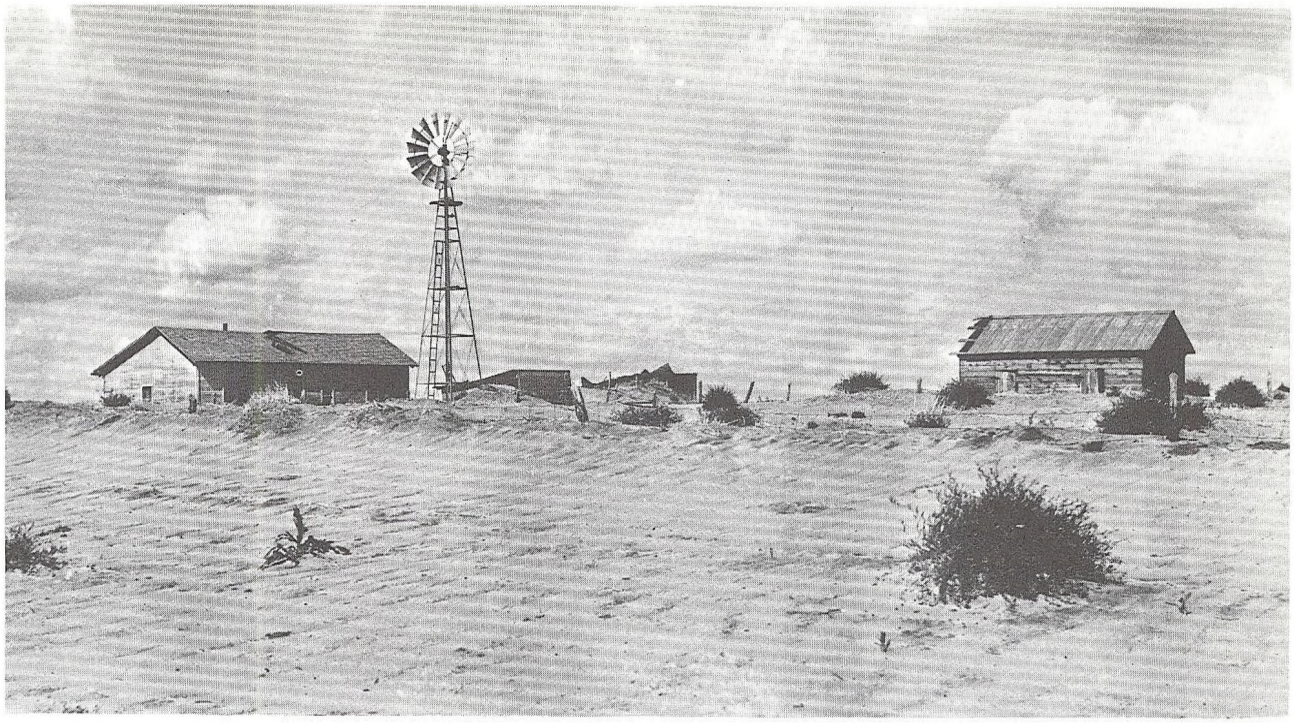
While generally the final decision must remain with the Federal Government, the states are significantly

[11] Lands acquired under the land utilization program between 1935 and 1946 were primarily marginal and submarginal farms. Nearly one-half of the total area acquired is in the northern part of the Great Plains. See H. H. Wooten, *The Land Utilization Program, 1934 to 1964.* U. S. Department of Agriculture 1965, Washington, D. C.

* Commissioner Clark submits the following separate view: For the very reasons cited as background for Government acquisition of the land, I disagree with the conclusion reached.

[12] 43 U.S.C. § 315 et seq. (1964).

[13] 43 U.S.C. §§ 1411–1418 (1964).



This abandoned Oklahoma homestead testifies that not all West-bound pioneers were successful.

The Oklahoma land rushes have long been remembered as the dramatic era in America's homesteading history.

affected by these decisions. Allocation of water rights, and social costs resulting from farm failures, exemplify the varied interests a state can have. In most of the West, state governments have established regulatory agencies to allocate scarce water rights and have assigned priorities for water use among domestic and municipal uses, agricultural uses, and industrial uses. These priorities generally become part of a state's economic development plan. Thus, a state government, through its state water engineer or another agency, should have the power to determine if water rights are available and should be committed to Federal lands for irrigated agriculture. It is particularly important that the state be given the opportunity to determine the effect of water transfers, especially if changes in points of diversion are involved and existing return flows and subsequent appropriations are disturbed.

As in other parts of this report, the Commission endorses the concept embodied in the Public Land Sale Act of 1964, which contains a provision that lands should not be disposed of until zoning regulations have been enacted by the appropriate local authority.[14] It is not likely that state or local governments will object to the establishment of most farm enterprises; but since they will be required to provide whatever additional social services may be needed for the new enterprise, it is appropriate to give them the opportunity to determine whether allocation to intensive agriculture would be consistent with overall state and local development plans. If they fail to utilize the opportunity, and water is available, the Federal Government should be able to proceed with disposal.

Future agricultural development in Alaska should be based entirely on lands selected by the state under the statehood grant. Direct participation of the state in the whole process of making lands available for development is especially important in Alaska because of the relative lack of development and the high cost of making governmental services available to remote locations. The statehood grant of over 100 million acres, however, gives Alaska an opportunity to exert control over agricultural development in the state.

At the present time, there is no statutory authority for classification of public lands in Alaska other than that provided under the temporary Classification and Multiple Use Act of 1964.[15] The kind of classification under the Taylor Grazing Act[16] that controls agricultural entries on public lands in the lower 48 states does not apply to Alaska, which is excluded from the provisions of the Taylor Act. Thus, Alaska is the one state in which agricultural entries under the Homestead Act[17] can be made anywhere on unappropriated, unreserved public domain lands.

The Homestead Act has been generally unsuccessful in Alaska. We note that only one-third of the claims went to patent and less than 6 percent of the patented land is now cultivated. To an even greater extent than in other areas, homesteading was used as a means of acquiring public lands by people who were interested in settlement, but not necessarily in farming.[18]

The lack of control over the location of homesteads has caused a substantial expenditure of public funds to provide schools, roads, and other services to remote areas. Because, as indicated above, the Taylor Act does not apply in Alaska, there is no machinery for screening homestead entries on a case by case basis. This lack of control by either the Federal or the state government would be rectified by our proposal.

The State of Alaska has already selected most of the suitable agricultural land. Any Federal approach to making lands available for agricultural use on an indiscriminate basis without fullest consultation with the state would only succeed in encouraging fraudulent use of the Federal laws and in frustrating state efforts to plan land uses statewide.

Consideration of Restraints

> Recommendation 71: The allocation of public lands to agricultural use should not be burdened by artificial and obsolete restraints such as acreage limitations on individual holdings, farm residency requirements, and the exclusion of corporations as eligible applicants.

The agricultural land laws contain a number of restrictions designed for the settlement objectives of those laws. The principal limitations deal with individual acreage holdings, residency requirements, and the ban in some cases against corporate farming.

We can understand the reasons that led to the use of such restraints in the agricultural land laws. But our review has convinced us that the continued imposition of limitations that were designed for an earlier era is not wise and that great care must be taken in imposing new limitations. The great speed with which changes in technology and the organization of agriculture take place today can make policies that appear to be modern obsolete within a few years.

[14] 43 U.S.C. § 1422 (1964).

[15] 43 U.S.C. §§ 1421–1427, as amended, (Supp. IV, 1969).

[16] 43 U.S.C. § 315f (1964).

[17] n. 1, supra.

[18] University of Wisconsin, *Federal Land Laws and Policies in Alaska*, Ch. V. PLLRC Study Report, 1970.

Acreage Limitations

One common feature of all agricultural settlement laws is some form of statutory limitation on the acreage any one person can acquire. The maximum acreage an individual may obtain ranges from 160 under the general homestead laws to a combination of desert land and enlarged homestead entries of up to 480 acres.

In the Reclamation Act of 1902,[19] Congress set a maximum limitation of 160 irrigable acres of land for a farm unit established on public land within a reclamation project, but the Secretary of the Interior was given authority to limit the individual public land farm unit to a lesser amount. The size of the farm unit is based upon the sufficiency of each unit to support a family and repay to the reclamation fund the charges apportioned to the land.

The contractor study prepared for the Commission provides data concerning the changes which have taken place in the size of farms in the 17 western states since about 1935, and the picture that emerges is not at all consistent with the restrictions in the land laws that limit the acreages made available to an entryman. Between 1935 and 1964, the percentage increase in farm size ranged from 71 percent in Nebraska to 742 percent in Arizona. Farm size doubled in virtually all of the 17 states studied, and the increase in four states was about threefold.[20]

In 1964 Oklahoma had the smallest average farm, 407 acres, followed by Washington with 418 acres and California with 458. In all other states the average farm totaled at least 500 acres, and in six of the 17 states the average was more than 1,000 acres. Moreover, the average size of irrigated farms demonstrated the same characteristics. Although, as a general rule, only a small part of irrigated farms was actually irrigated, 10 of the 17 western states had irrigated farms averaging more than 1,000 acres, ranging up to 4,706 acres in Arizona.

The sizes of these farm enterprises are consistent with agricultural technology today but will probably be too small in the near future. Modern labor-saving machinery is costly and must be applied to larger acreages in order to achieve reductions in unit costs. A substantial increase in the size of the farm and a significant decline in the number of farms are the inevitable results of improvements in technology.

The Commission recognizes the desirability of permitting relatively small farmers and potential farmers access to Federal lands. But this objective requires more imaginative solutions than simply limiting the total amount of acreage that can be owned by a single person or firm. *The amount of land transferred for intensive agricultural use should not be subject to such restrictions.* However, this recommendation is conditioned by two important qualifications:

Federal lands, if suitable for allocation to agricultural use, should be sold in units small enough to allow relatively small farmers entrepreneurs and potential farmers to compete for them on a meaningful basis. If Federal land disposal policy for lands potentially useful for intensive agriculture is designed so as to avoid excluding smaller enterprises, then lands must be offered in units that will permit bidding by others besides large firms and wealthy persons, but will still be large enough for efficient operations. Because the minimum farm size necessary for efficient operation will vary from region to region, the final determination of optimal size offerings should be made regionally. In some situations, disposal units of 80 acres might be appropriate; in other cases, because of the physical and hydrological characteristics of the region, 640 acres might be the optimal size of land offerings.

To assure that the limitations imposed in each area are consistent with the realities of farming, we suggest that state and perhaps local governmental institutions be involved in the determinations. The agricultural experiment stations of the land grant universities would be particularly useful, as would the extension agents located in each county.

Secondly, the amount of land acquired by a single buyer in a single sale of Federal lands should be limited to an appropriate percentage of the total offered. The objective of allowing small enterprise to acquire some of these Federal lands could still be frustrated if an affluent buyer simply outbid all others. Consequently, there should be a limitation on the number of acres a single buyer or consortium of buyers could purchase at a single sale.

Residency Requirements

Residence on farms should not be a prescribed condition for intensive agricultural use of Federal lands. The homestead laws require that the entryman construct a habitable house upon the land, establish residence within six months, and, except for certain circumstances, maintain his residence there for at least seven months out of each of the next three years. Desert land entrymen must have established a residence in the state in which the desired desert land is located.

Because settlement objectives, as noted previously, can no longer be of major importance to public land agricultural policy, residence as a condition of eligibility to acquire agricultural lands is anachro-

[19] n. 4, supra.

[20] University of South Dakota, *Federal Public Land Laws and Policies Relating to Intensive Agriculture,* Vol. III. PLLRC Study Report, 1969.

nistic and loses significance. But more importantly, residence requirements can restrict the operation of public land agricultural policy in a way that will lead to inefficient farming. We see no reason why, for example, Federal lands in a state should not be made available equally to a resident of the state and to a nonresident who desires to establish a farm in the state. Neither do we see, in this day and age, when many farmers live in towns and commute to work on their farms, why Federal land should be made available only to those who promise to live on the land.

Corporate Farming

The corporate form of business organization should not be excluded from participation in the distribution of Federal lands for intensive agricultural uses.

Under the homestead laws and the Desert Land Act, corporations are not permitted to acquire agricultural land. But there appears to be no compelling reason to continue to discriminate against the corporate form of business organization in disposing of Federal lands for intensive agriculture. Not only is such discrimination inequitable, it also risks gross inefficiencies by ignoring the technology and size requirements of modern agriculture and the fact that many small farms are now operated by family corporations in order to secure advantages under tax and inheritance laws.

Similarly, *prescribed financial requirements and capacity should not be a condition of access to Federal lands for intensive agricultural use.* While the general homestead laws do not require any indication of financial capability, the reclamation homesteader must pay 5 percent of the construction charge fixed for the farm unit he has chosen before the required certificate of qualification will be issued.

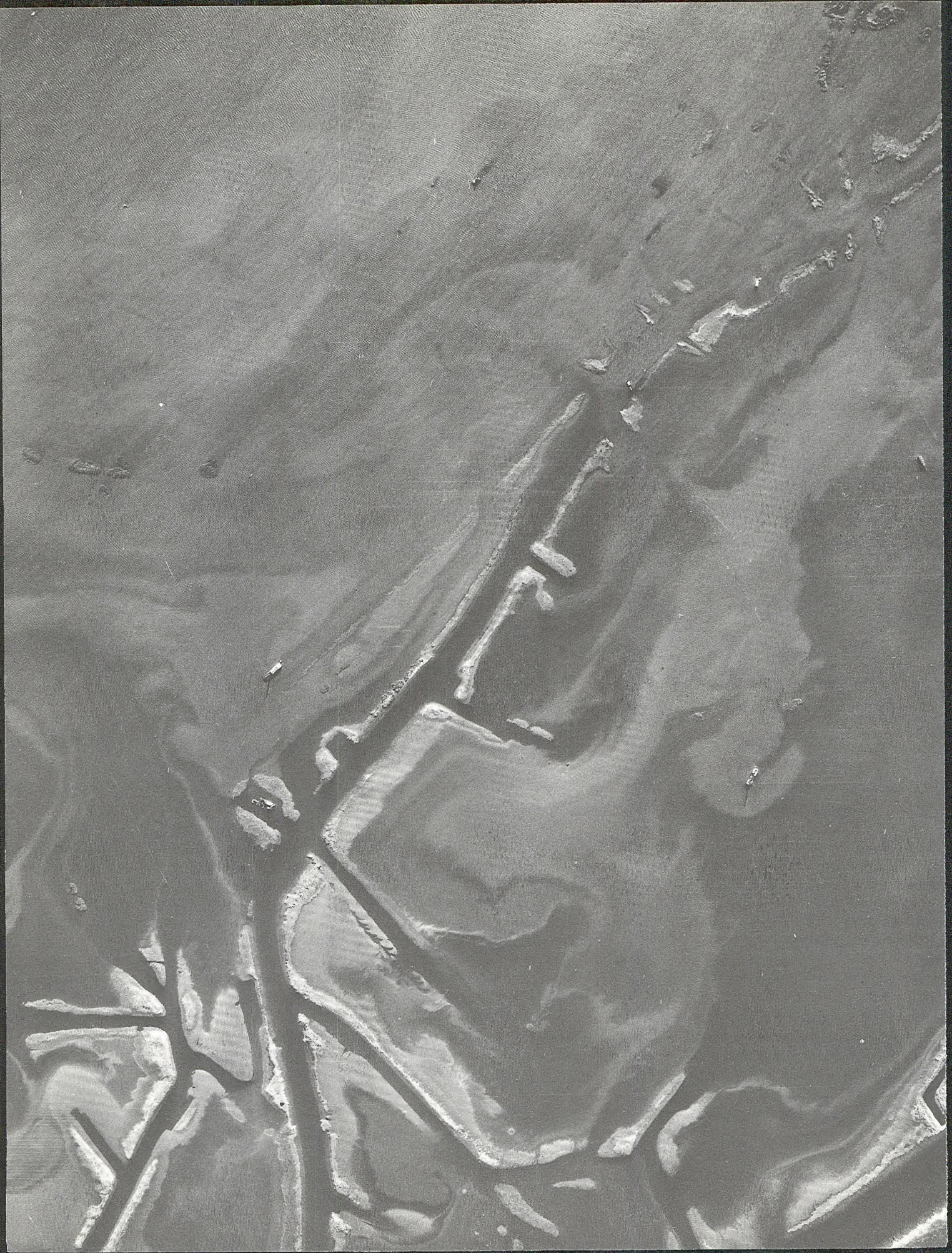
We recognize that modern agriculture, with its demands for investment for machinery, irrigation facilities, and land, requires that a potential farm enterprise have substantial financial backing. It simply is not possible in most areas of the country today to start farming without both financing and technical capability. But, we do not believe that the investment needs are so great that it is necessary or desirable for the Federal Government to so qualify those to whom land will be made available.[21] The fact that land is to be sold at its market value together with our next recommendation will tend to eliminate those who are not in a position to bid competitively for public land suitable for intensive agriculture.

We recommend that cultivation requirements be used for a limited period of time to minimize speculation on lands disposed of for agricultural use. We generally oppose restrictions on land use after title passes from the Federal Government to a purchaser who pays market value for the land. However, in some instances, including the disposal of land for agricultural purposes, we believe it is desirable to assure the dedication of the land to agricultural use for a prescribed limited period.

Agriculture is a low value use in most areas when compared with residential or commercial development. Throughout the country, the possibility of making a speculative windfall gain on farmland has caused problems for local zoning boards and has created instability in local land markets. The Federal Government should not add to the problem by making public lands available in a way that will encourage speculation, particularly in farming areas where local zoning, if any, may be weak.

Requiring that market value be paid in disposing of lands for intensive agricultural use will go a long way to minimize speculation. But this should be accompanied by a cultivation or development requirement, with provision for the possibility of reversion of the land title for noncompliance. We do not believe that this constraint should be indefinite, but rather that it should expire automatically after a reasonable period of time has passed.

[21] Where investments are to be very heavy, and other uses will be precluded, we recognize the need to have a financial standard for qualification. See Chapter Thirteen on Occupancy Uses.



The Outer Continental Shelf

THE CONTINENTAL SHELF is an extension of the continental land mass that is overlain by water. The water and its resources above the Shelf are not considered a part of it and are governed almost entirely by a legal regime that is separate and distinct from that of the Shelf. However, the exploitation of the mineral resources of the Shelf does have an interrelationship with other values in the water and on the sea floor, and the Commission, in carrying out its statutory responsibility to consider the "disposition or restriction on disposition of the mineral resources . . . in the Outer Continental Shelf," has taken those values and relationships into account in this study.

The United States, by Presidential proclamation in 1945,[1] asserted jurisdiction over natural resources of the subsoil and seabed of the Continental Shelf adjacent to our shores. In 1947, the Supreme Court ruled that the United States was possessed of paramount rights over the Outer Continental Shelf seaward of the ordinary low water mark along its coast.[2] Following that decision, Congress passed the Submerged Lands Act of 1953,[3] granting the coastal states title to the submerged lands seaward from their coasts to a distance of 3 geographical miles and, in the case of Florida and Texas, up to 3 marine leagues in the Gulf of Mexico. Since then, there has been protracted litigation to determine the exact coastlines of these states from which to measure the grant.

Since the Shelf lands, which are under the jurisdiction and control of the Federal Government, are outside the territorial limits of any state, they and their resources differ, in that respect, from the public lands onshore which lie within state borders. They may be more nearly equated legally with the federally owned lands within a territory prior to statehood. However, the public land laws are inapplicable to the Shelf, and in August 1953, Congress enacted the Outer Continental Shelf Lands Act[4] to provide a system to govern the issuance and maintenance of mineral leases on the Shelf.

Under the Act, the Secretary of the Interior is given limited but discretionary authority to regulate mineral leasing on the Shelf: (a) without prejudice to independent as well as major operators; (b) in such a way as to obtain a fair return for the United States; and (c) so as to insure the fullest recovery of the resource under sound conservation practices.

The Act requires that oil and gas leases be issued on a competitive basis, either by cash bonus with a fixed royalty of not less than 12½ percent of the value of production, or on a royalty basis with a fixed cash bonus. With respect to sulphur and other minerals, the Act provides for competitive cash bonus bidding only, and sulphur leases are required to carry a royalty of not less than 5 percent of the value of production.

In the case of other minerals, the Secretary of the Interior has been granted wide discretionary authority. However, no regulations for the leasing of those minerals have yet been issued. Only one such lease (for phosphates) has ever been issued, and it was cancelled and the bonus and rentals refunded when it was determined that unexploded naval ordnance on the seabed would prohibit mining operations.

[1] Pres. Proc. No. 2667, Sept. 28, 1945, 59 stat. 884; Exec. Order No. 9633, Sept. 28, 1945, 3 C.F.R. 1943–1948 Comp. P 437.

The term "Outer Continental Shelf" means that portion of the Continental Shelf which is under the jurisdiction of the Federal Government as opposed to that portion which is under the jurisdiction of any state.

[2] U. S. v. California, 332 U. S. 19 (1947).

[3] 43 U.S.C. §§1301–1303, 1311–1315 (1964).

[4] 43 U.S.C. §§ 1331–1343 (1964).

Oil, gas, and natural gas liquids comprise the greatest current production of all Shelf minerals. Proved reserves are 2.9 billion barrels of oil and natural gas liquids and 30.3 billion cubic feet of gas. There is no satisfactory basis for determining undiscovered recoverable resources, but estimates suggest a range of 34 to 220 billion barrels of liquids and 170 to 1,100 trillion cubic feet of natural gas. Although only oil, gas, natural gas liquids, and sulphur are presently being produced from the Federal portion of the Continental Shelf, a wide range of other minerals of varying quality and quantity are also known to exist on the Shelf. Currently, however, there is no significant demand for those deposits, and required supplies of such minerals are being furnished by onshore sources of foreign markets.

In terms of dollar value, the resources of the Continental Shelf have already contributed substantially to the national Treasury. Receipts as of June 30, 1968, from the sale of leases on the Shelf and from rentals and royalties totaled over $2.7 billion.

Questions concerning the extent of the jurisdiction over the Shelf of the Federal Government, vis-a-vis the states and other nations are important. However, the Organic Art of the Commission limits its study in this area to "lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf." [5]

Therefore, the Commission has confined its detailed policy examination and its recommendations to the administration of the mineral resources of the Outer Continental Shelf which belong to the United States, whatever the extent of national jurisdiction.

Authority Over the Shelf

> Recommendation 72: Complete authority over all activities on the Outer Continental Shelf should continue to be vested by statute in the Federal Government. Moreover, all Federal functions pertaining to that authority, including navigational safety, safety on or about structures and islands used for mineral activities, pollution control and supervision, mapping and charting, oceanographic and other scientific research, preservation and protection of the living resources of the sea, and occupancy uses of the Outer Continental Shelf, should be consolidated within the Government to the greatest possible degree.

The exclusivity of Federal jurisdiction over the seabed and subsoil of the Outer Continental Shelf has been recognized by treaties, Presidential proclamation, congressional action, and judicial decision. Adjacent states have no authority to enforce their civil or criminal laws on the Shelf beyond the 3-mile or 3-league limit. To the extent that they are not inconsistent with Federal statutes or regulations, the provisions of state civil and criminal laws are incorporated by reference and made applicable to the Shelf as though they were Federal law. The effect of this assimilation is that the enforcement of these state laws is entirely a Federal matter. The Commission finds no valid reason for extension of state jurisdiction to the Shelf, since to do so would be contrary to the national character of the Continental Shelf lands and to the established position and obligations of the United States in international law and treaties.

The administration of the Outer Continental Shelf Lands Act has not been free of problems. But the Act itself, as an authority for leasing, has worked well, and the leasing procedures adopted to implement the Act have been relatively free of major problems.

Conservation Regulations

Although the Commission is not concerned with techniques of production control, it recognizes that one of the most important methods of attaining the maximum recovery from an oil reservoir is the limitation of the rate of production. Production control, therefore, is an integral part of mineral production management.

The Outer Continental Shelf Lands Act [6] gives the Secretary of the Interior unrestricted authority to regulate and conserve the production of mineral resources from the Outer Continental Shelf. He may, if he chooses, institute a system of production controls for oil which would depart from the system used by adjoining states. However, the Act specifically authorizes the Secretary to cooperate with the adjacent states in their conservation efforts.

A number of states administer programs to proration the amounts of crude oil that can be produced from fields within their boundaries.[7] Prorationing

[5] See specifically 43 U.S.C. § 1400(g) (1964).

[6] 43 U.S.C. § 1334 (1964).

[7] Proration has been defined as the rules and procedures by which a regulatory agency determines total crude oil production for a state and allocates the total among the various reservoirs and to the producers in each reservoir. The maximum "allowable" production from each well is fixed for a given period of time. Production in excess of the allowable is prohibited.

Prorationing measures were adopted in order to regulate the rate at which the owners of overlying lands could withdraw oil from a common reservoir. Some prorationing states establish allowables on the basis of the "maximum efficient rate" of production (MER) that will conserve field pressures and accomplish the maximum primary recovery of oil in each pool or reservoir. Other states also apply a

of production has frequently been attacked because it is allegedly a system of price fixing by the state. However, the courts have sustained the systems on the ground that they serve a legitimate conservation purpose, even though they may have an incidental effect on prices.[8] Furthermore, recognition of prorationing as a conservation system has been given by Congress in its consent to the Interstate Oil Compact to Conserve Oil and Gas, first approved in 1935 and extended 10 times, and in the Connally Act[9] which prohibits the interstate transportation of oil produced in excess of allowables fixed by state regulation.

Among the coastal states, Louisiana and Texas, dominant domestic oil-producing states, both have market demand prorationing systems. Most, if not all, of the producing states regulate well spacing as a conservation measure, and the Federal Government also regulates the spacing of wells on the Shelf. This type of regulation does have an effect on the rate of production from a given reservoir, although neither as direct nor as limiting as that of prorationing.

In 1956, the Federal Government and the State of Louisiana entered into an agreement to permit oil and gas exploration and production offshore Louisiana during the pendency of litigation over the state's coastal boundary. At the same time, a tacit agreement was reached under which the Federal lessees off Louisiana are required to comply with state conservation regulations. Similar procedures have been applied to areas off the coast of Texas.

Consistent with our basic recommendation that complete authority of all activities of the Outer Continental Shelf should continue to be vested by statute in the Federal Government, *we recommend that, in the interest of conservation, the Federal Government promulgate and administer its own rules for controlling the rate of production from Outer Continental Shelf oil and gas fields.* In this connection, we note that in January 1967, the Secretary of the Interior announced his intention to promulgate rules for the regulation of oil and gas production from the Shelf, including independent prorationing.[10] The announcement has never been implemented, and *the Commission urges that it be done.*

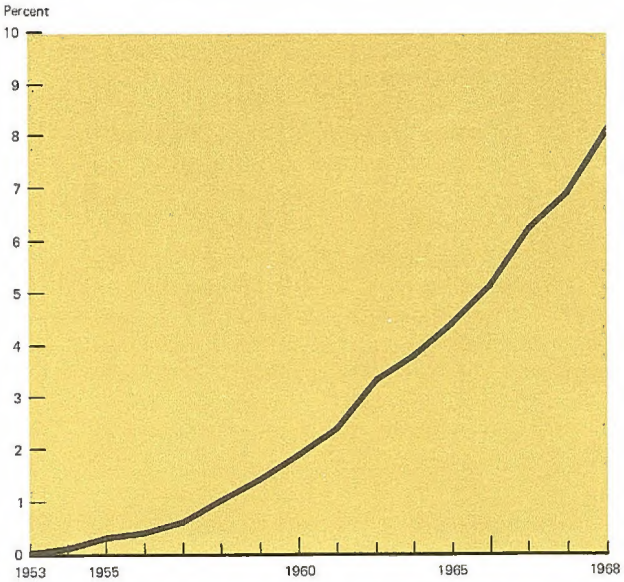
market demand factor which restricts the allowable production to a level equal to the estimated demand at the prevailing price. The theory supporting this system is that a stable market will encourage orderly production of oil and avoid economic pressures to maximize production over the short term.

[8] See Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U. S. 210 (1932).

[9] 15 U.S.C. §§ 715–715L (1964), as amended, (Supp. V, 1970).

[10] 32 Fed. Reg. 95.

OUTER CONTINENTAL SHELF CRUDE OIL PRODUCTION AS A PERCENTAGE OF TOTAL U.S. CRUDE PRODUCTION



SOURCE: PLLRC STUDY, ENERGY FUEL MINERAL RESOURCES AND MINERAL PRODUCTION ROYALTY INCOME, AND RELATED STATISTICS, U.S.G.S., 1968.

Crude oil from the Outer Continental Shelf is contributing an increasing proportion of total U. S. production.

Coordination with the States

Throughout our deliberations, there was a strong sense of need for coordination between the Federal Government and the affected states. This concern is reiterated in many parts of this report. While asserting the need for Federal conservation control of the Outer Continental Shelf, we recognize that there must be close coordination between the Federal Government and the adjacent states.

Any limitations proposed by adjacent states should be taken into consideration by the Federal Government in determining the amount of production allowable from wells on Federal leases. But, state production regulations have been developed from data related to dry land and shallow tidewater operations. As Outer Continental Shelf production moves into deeper waters, economic and technical comparability between state production, which is in shallow waters or on dry land, and deep water production becomes more remote.

At some point, it becomes doubtful that it will be in the interest of the Federal Government or the lessee to require compliance with state allowables. Therefore, the Federal Government should have an independent, flexible system of allowables to meet the variety of conditions which may be experienced.

Administration

It is recognized that the areas of the Outer Continental Shelf, the surface and subsurface of the seabed, the water column above it, and the air above the water, are subject to a variety of uses and controls by different agencies of the United States. The Commission was astounded, in fact, to find that currently 10 major departments and agencies, ranging from the Corps of Engineers to Interior's Fish and Wildlife Service, have jurisdiction or responsibility for various activities on the Outer Continental Shelf or the super-adjacent waters and air space. Within these departments and agencies, jurisdiction and responsibility is further fragmented.

In practice, this has meant that lease contracts have not always contained all the terms and conditions which the lessees have eventually had to meet. At the time of the Santa Barbara oil lease sale, for example, the leases in some areas did not contain certain "hold harmless" and "evacuation" clauses which had been recommended by the Department of Defense because of its activities at Vandenberg Air Force Base. However, the Department of Defense eventually succeeded in imposing the conditions through the permits that the lessees had to secure from the Corps of Engineers to erect their drilling platforms.[11]

Resources of the Continental Shelf already have contributed nearly three billion dollars to the National Treasury.

Since a lessee can complain that the contract given him by the leasing agency did not allow for certain conditions that were later imposed upon him by other agencies, a continuation of present practices could be harmful. The orderly development of leased areas could be affected if lessees surrendered their leases rather than assume the additional costs. More importantly, there is a danger under the present system of fragmented jurisdiction that some resource values might not be adequately protected due to lack of coordination within the bureaucracy.

We do not believe that there is any sound reason to perpetuate divided administration. Quite the contrary, recent history indicates that it is essential that responsibility and authority for administration be consolidated not only for the benefit of the public, represented by the government, but also in fairness to those operating on the Shelf. We recognize that national security considerations may necessitate placing some responsibility in the Secretary of Defense. If so, *we recommend that a more formal cooperative understanding be arrived at between the leasing agency and the Department of Defense so that, to the extent possible, conditions required by national security be contained in the lease sale notice and the lease.*

In the interim, during the period before this recommendation to centralize administration in one place is implemented, we believe that some remedial steps should be taken administratively. *We recommend, to the extent that more than one department continues to have functions on the Outer Continental Shelf, consolidation within each department should be accomplished to the maximum extent feasible.*

Protection and Enhancement of the Environment

Recommendation 73: Protection of the environment from adverse effects of activities on the Federal Outer Continental Shelf is a matter of national concern and is a responsibility of the Federal Government. The Commission's recommendations concerning improved protection and enhancement of the environment generally require separate recognition in connection with activities on the Shelf, and agencies having resource management responsibility on the Shelf should be required by statute to review practices periodically and consider recommendations from all interested sources, including the Council on Environmental Quality.

In addition, there must be a continuing statutory liability upon lessees for the clean-up of oil spills occasioned from drilling or

[11] The Corps of Engineers, charged by the Outer Continental Shelf Lands Act with preventing obstruction to navigation of artificial structures on the Shelf, issues drilling platform permits. 43 U.S.C. § 1333f (1964). Similarly, certain conditions can be added to drilling permits by other agencies like the Fish and Wildlife Service and the Geological Survey.

production activities on Federal Outer Continental Shelf leases.

Use of the sea, its waters, the seabed, and what lies under it, offers one of the most promising frontiers of opportunity. But the development of mineral resources from the Outer Continental Shelf must be considered in relation to navigation, commercial and sport fishing, scientific and research activities, bottom-dwelling marine life, recreation, defense installations and projects, and aesthetic values.

By treaty, by law, and by regulation, the United States has attempted to protect the Outer Continental Shelf environment and the adjacent waters and shores. But recent massive oil leaks and spills in the Santa Barbara Channel and in the Gulf of Mexico indicate that administrative actions have not, in fact, been adequate to minimize or prevent damage to other uses and values.[12, 13] To avoid repetitions of these incidents with their resultant damage to beaches, marine property, and marine life, administrative procedures and actions, as recommended elsewhere in this report, must be improved and tightened.

During this Commission's review, we were encouraged, first, by the promulgation of regulations and, subsequently, by the passage by Congress of an act imposing absolute liability upon the lessee for cleanup of oil spills occasioned by drilling or production operations. In order to assure continuity coupled with a certainty of minimizing damage, to the extent possible, *we favor statutory definition of a lessee's liability.*

While placing liability on the lessee will assure correction of the damage, it is far more important to take whatever action the Government can to minimize, if not eliminate, the possibility of pollution or other adverse impacts on the environment.

Elsewhere in this report, we make specific recommendations relative to the enhancement or maintenance of the environment on public lands generally. However, the impact from a leak on Outer Continental Shelf operations is so great that we urge accelerated action to implement all the recommendations contained in this chapter as part of the process of the increased vigilance that is necessary to guard against future incidents involving oil spills on the Outer Continental Shelf. With such increased vigilance, we believe it is possible to continue oil and gas leasing on the Shelf and not deny the United States this vital source of domestic supply.

[12] In this connection, the Commission notes that there is a parallel and sometimes greater threat to the environment by reason of spills caused from accidents incurred by the tankers currently being used to transport oil.

[13] Rocky Mountain Center on Environment, *Environmental Problem on the Public Land,* Pt. II, case study No. 11. PLLRC Study Report, 1970, contains a detailed description of the Santa Barbara oil spill and its environmental consequences.

Notices and Public Hearings

Recommendation 74: Proposals to open areas of the Outer Continental Shelf to leasing, including both the call for nomination of tracts and the invitation to bid, as well as operational orders and waivers of order requirements should be published in at least one newspaper of general circulation in each state adjacent to the area proposed for leasing or for which orders are promulgated.

Where a state, on the recommendation of local interests or otherwise, believes that Outer Continental Shelf leasing may create environmental hazards, or that necessary precautionary measures may not be provided, or that natural preservation of an area is in the best interest of the public, then, at the state's request, a public hearing should be held and specific findings issued concerning the objections raised.

Existing regulations neither require public hearings, nor do they provide for any public notice which would prompt a request for such a hearing, other than a call for nominations of tracts to be leased.[14] The call for nominations is the procedure by which the Department of the Interior seeks to identify the tracts that should be offered for lease at a particular time. In past practice, the operating industry has had the greatest influence by indicating its interest in certain tracts which it would like to see offered for one reason or another. We also note that of all the concerned Federal agencies, only the Department of Defense has asserted considerable influence in the designation of tracts for lease, even though others, such as the Bureau of Commercial Fisheries in the Fish and Wildlife Service, would appear to have a direct interest. Parenthetically, therefore, this underlines a need for our earlier recommendation to centralize Federal authority over the activities on the Shelf.

We do not imply that greater surveillance by Federal agencies over tracts to be offered for lease will fill the existing gap. Presently, the call for nominations is published in the Federal Register which is seen by relatively few people. A press release issued by the Department of the Interior generally results in publicity only in the trade press. These notices, while ample for the purpose of notifying the oil and gas industry, are insufficient notice to the public that a sale may be held.

[14] See 43 C.F.R. Pt. 3380 (1969).

Notice of intent to offer leases describing in general terms the area subject to nomination should be published in newspapers in the state or states adjacent to the proposed sales area and elsewhere as may be appropriate. This notice should be published coincidentally with the call for nominations or upon the receipt of nominations if made independently of a call, and should set forth the conditions which will require a public hearing.

Because of the public's concern over possible adverse effects of Outer Continental Shelf operations, Outer Continental Shelf operational orders should be given even more publicity than the regulations themselves. Such orders, as well as the granting of any waivers of order requirements, should be published in newspapers of general circulation in the states adjacent to the offshore area which they affect, and if objections arise, public hearings, at the state's request, should be held, and findings issued concerning the objections.

We recognize that newspapers in the area may, at any particular time, have other items that they consider to be of greater news so that the information may not be published in the news columns even though offered to the press. Likewise, we recognize that publication in the "legal notices" section of a newspaper would not provide the dissemination of information we believe necessary. *We, therefore, recommend that when information concerning (1) a call for nomination of tracts, (2) invitation for bids, and (3) details of operational orders or waivers of order requirements are not published as news in the news columns, the operating agency should place a display advertisement in at least one newspaper of general circulation in the area.*

Modification of Leasing Practices

Recommendation 75: The Outer Continental Shelf Lands Act should be amended to give the Secretary of the Interior authority for utilizing flexible methods of competitive sale. Flexible methods of pricing should be encouraged, rather than the present exclusive reliance on bonus bidding plus a fixed royalty. In addition, the timing and size of lease sales, both of which are presently irregular, should be regularized. Furthermore, while discretion to reject bids should remain with the Secretary, this authority should be qualified to require that he state his reasons for rejection.

To date, all Outer Continental Shelf leases have been issued with a fixed royalty of 16⅔ percent and have been awarded on cash bonus bids. In the interest of conservation, the Secretary may permit a reduction of royalties if the lease cannot be operated successfully at the statutory minimum of 12½ percent.[15] No application for this discretionary relief has been filed since leasing activity began in 1954.

Our contractor study report and other studies show that a fixed royalty causes the operator to shut down when the margin of revenues over costs fails to cover the fixed royalty, thus resulting in a loss of revenue to the lessor and failure to make maximum recovery of the resource.[16] There is some indication, also, that the fixed royalty-cash bonus bid system prevents smaller operating companies from competing for leases. The Commission sees a need for the granting of authority to the Secretary for more flexible methods of pricing.

In addition, sales held on pre-announced schedules would enable the industry to adjust its own planning to the sale schedule. Offering a relatively small number of leases at frequent fixed intervals would also afford smaller companies an opportunity to marshal their resources well in advance of sales and, thereby, compete more effectively. It would, furthermore, give both industry and the Government an opportunity to evaluate more effectively the potential of the area to be leased. Of equal importance is the fact that it would give other interested Federal agencies and user groups more lead time to consider the effects on nonmineral resource values.

In the exercise of the discretion conferred upon him by statute, the Secretary has by regulation reserved the right to "reject any and all bids" for mineral leases on the Shelf.[17] The exercise of that right has been a cause of concern. Approximately 5 percent of high bids htave been rejected, although the ratio of rejections to acceptances of bids has been increasing in recent sales. The Secretary has rejected demands that he state the specific grounds for bid rejection. While the practice of not giving a reason for rejection does not conflict with contract law, the magnitude of the undertaking in exploratory work and the expense incurred by bidders in preparing for a lease sale reinforces the traditional admonition against arbitrariness in government.

We recommend that the decision to reject bids should be subject to judicial review only if it can be shown to be arbitrary and an abuse of discretion.

Finally, the Commission does not believe that a case has been made for extending the primary term of oil and gas leases on the Shelf, and recommends that it remain 5 years, as now provided.

[15] 43 U.S.C. § 1334(a)(1) (1964).

[16] Nossaman, Waters, Scott, Krueger & Riordan, *Outer Continental Shelf Lands of the United States,* Ch. 11. PLLRC Study Report, 1969.

[17] 43 C.F.R. § 3382.5.

Federal Responsibility to the States

Recommendation 76: To the extent that adjacent states can prove net burdens resulting from onshore or offshore operations, in connection with Federal mineral leases on the Outer Continental Shelf, compensatory impact payments should be authorized and negotiated.

Revenue from mineral leasing on the Outer Continental Shelf is deposited to the credit of the General Fund in the Treasury of the United States. From the time of the enactment of the Outer Continental Shelf Lands Act, coastal states adjacent to mineral-producing areas of the Shelf have sought a share of the revenues. The legislative history of the Act, however, makes it clear that Congress considered that the Submerged Lands Act grant to states had satisfied adjacent state equities.[18] With this, the Commission agrees.

Because Outer Continental Shelf lands do not lie within the borders of any state, they do not represent any limitation on the property tax potential of a state. In this respect, they are unlike the onshore public lands. The considerations which prompt this Commission to recommend elsewhere a payments-in-lieu-of-taxes system for onshore public lands are, therefore, inapplicable to the Outer Continental Shelf.

However, the rationale by which we arrived at the conclusion that revenues generated by resource sales onshore should not be shared with the states is equally applicable here. That rationale is based primarily on the fact that a percentage of uncertain revenue is in no way related to the burdens imposed by the Federal presence. *We, therefore, conclude that adjacent states should not share in the revenues from Federal mineral leases on the Outer Continental Shelf.*

No evidence has been developed in the studies performed for us, or presented to the Commission by any coastal state, which demonstrates that there is a net burden to the states as a result of activities on the Federal Outer Continental Shelf.

Shore installations supporting Shelf activities are subject to state taxation. People who work offshore, live onshore. Therefore, just like people who work in Federal buildings or installations but live "in town," they and their properties are subject to state and local taxation.

The coastal states, and Louisiana in particular, have, nevertheless, continued to assert a claim to a share of Shelf revenue on the grounds that Shelf development activity has placed burdens of education, roads, and public safety upon the states and their subdivisions, and that the states provide certain direct services, including radiation control and wildlife and fishery protection, to the Federal Government and its lessees through formal and informal cooperative agreements.

It may be that states can prove a net burden. But proof should lie with the states and the local units of government having jurisdiction over the area which is burdened.

The Commission rejects the suggestion that the states or their subdivisions be permitted to tax a possessory interest in facilities located on the Outer Continental Shelf as not being consistent with maintaining exclusive Federal jurisdiction.

Research and Resource Development

Recommendation 77: The Federal Government should undertake an expanded offshore program of collection and dissemination of basic geological and geophysical data.

As part of that program, information developed under exploration permits should be fully disclosed to the Government in advance of Outer Continental Shelf lease sales. However, industry evaluations of raw data should be treated as proprietary and excluded from mandatory disclosure.

Most of the information now available to the Federal Government concerning the value of leased and prospective leasing areas of the Shelf is derived from data gathered by industry. Exploration permits and leases have had provisions requiring the disclosure of certain geological information on a confidential basis. However, the existing disclosure requirements pertain to geological rather than geophysical information.

Geophysical surveying does not require physical penetration or sampling of the crust of the earth through well holes as do geological surveys. Consequently, it is less expensive and more extensively employed for pre-lease evaluation.

Because little Federal geological exploration is conducted, and because, even under the most recent regulations, the information required by the Government is obtained primarily from wells being drilled for production,[19] such information can have only limited use for pre-lease evaluations, although the data will enhance the total knowledge of Shelf geology. Furthermore, since industry activities relate

[18] The Submerged Lands Act limited the area to 3 miles from the coastline of the states. Although the Act provided that states might establish entitlement to a larger area, the Supreme Court has found that only Florida and Texas have that entitlement. U.S. v. Florida, 363 U. S. 121 (1960); U. S. v. Louisiana, 363 U. S. 1 (1960).

[19] See 30 C.F.R. 250.38.

almost exclusively to oil, gas, and sulphur, information supplied by industry has resulted in minimal knowledge concerning other minerals.

Both the present and potential income from Shelf minerals warrant an expanded Federal program for the development of knowledge about the geology of the Shelf, equal at least to the prevailing policy of information acquisition for onshore minerals. At the present time, Federal activity in this respect is not commensurate with onshore programs.

An expanded program for the development of knowledge of the geology of the Shelf would be helpful in relating the mineral development program to other resources and values, as well as permitting more precise evaluations of lease proposals. Consequently, the Federal Government should undertake such an expanded program, but should not include location and evaluation of specific mineral deposits which are properly roles of the private sector. The level of activity should be comparable to that on upland areas.

In addition, information developed by industry under exploration permits should be fully disclosed to the Government in advance of lease sales. The interpretation of geophysical data is in the nature of a prime trade secret of the company gathering the data, and its release to the Government, even on a confidential basis, would create competitive problems. There is, however, no valid reason for not requiring the disclosure of raw data. These data and their interpretation will be valuable in determining the resource potential of areas nominated for lease, in evaluating bids for leases, and in developing the need to include special requirements in leases and permits for the protection of the environment and of other uses of the Shelf.

The Exploitation of Other Minerals

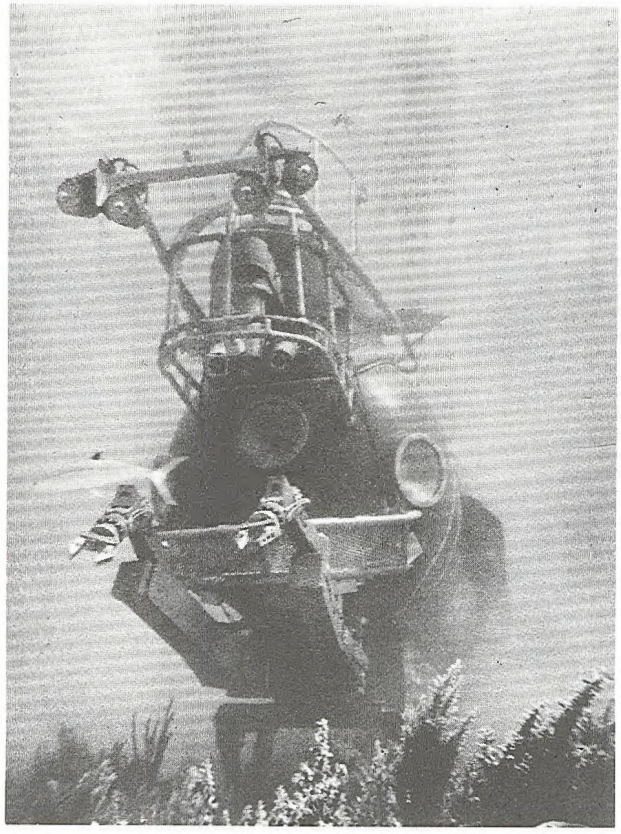
The Commission recommends that the Government offer preferential rights of definite term to private industry to explore, develop, and produce minerals other than oil, gas, and sulphur from the Shelf.

The Commission believes that no additional incentives are presently needed to encourage oil, gas, and sulphur development. Since the leasing system was inaugurated in 1954, over 1,200 leases have been issued for these minerals. Industry has invested large amounts in research and development, and current production from the Shelf, together with increasing potentials for the production of oil, gas, and sulphur, indicate that the economic production in itself is a sufficient incentive for needed exploration.

A different situation, however, exists with regard to other minerals. Although the Outer Continental Shelf Lands Act authorizes leasing for such minerals,[20] neither statutory guidelines nor general regulations concerning the terms and conditions of leases exist for them as they do for oil, gas, and sulphur. Accordingly, we have not developed the viable domestic ocean mining industry that may one day be essential to meet United States' mineral requirements.

It is premature to recommend a long-range policy governing the development of these other minerals. Instead, *it is suggested that Congress authorize the Secretary of the Interior to undertake experimental bidding and leasing arrangements, assuring mining companies of leases for a definite period, perhaps 10 years.*

In recommending flexible leasing arrangements, we have taken into consideration the recommendation that the location and patent system be extended to the Shelf. Although we recommend elsewhere in this report continuance of a modified location and patent system applicable to public lands generally, we do not believe it feasible to extend this system to the Outer Continental Shelf. However, we endorse the suggestion of the Commission on Marine Science, Engineering, and Resources that, in encouraging exploration of the Shelf, "The system's primary



Development of minerals other than oil and gas is in its infancy on the shelf. Here, an undersea research vehicle probes the ocean floor with manipulator arms.

[20] 43 U.S.C. § 1337(e) (1964).

objective should not be to maximize near-term Federal income from rents, royalties, or bonuses but rather the aggregate net economic return to the Nation from ocean mining activity." [21]

In the interim system that we recommend, we further endorse the recommendation of the Marine Science Commission that the flexibility given to the Secretary of the Interior should include waiver of competitive bidding subject, however, to the principle we enunciate in other parts of this report to the effect that, where competition is known to exist, competitive bidding procedures should be utilized.

The statute authorizing the system we recommend should require the Secretary of the Interior to report to the Congress after a specified trial period indicating the results of the program. Congress could then evaluate the results and determine the framework for permanent legislation.

[21] Commission on Marine Science, Engineering and Resources. *Our Nation and the Sea.*

CHAPTER TWELVE

Outdoor Recreation

THE REPORT of the Outdoor Recreation Resources Review Commission (ORRRC) in 1962 laid the foundation for a comprehensive national outdoor recreation policy.[1] The Commission suggested a policy framework based primarily on a division of responsibilities among local government, the states, and the Federal Government for supporting and furnishing the vast increases in various outdoor recreation opportunities sought by the American people.

Since we have built on, but not duplicated, the work of that Commission, and believe that its recommendations should be fully implemented with regard to the public lands, we here reiterate the essential points of the ORRC recommendations regarding the assignment of intergovernmental functions and responsibilities.

—The Federal Government should be responsible for the preservation of scenic areas, natural wonders, primitive areas, and historic sites of *national significance;* for cooperation with the states through technical and financial assistance; in the promotion of interstate arrangements, including Federal participation where necessary; for the assumption of vigorous, cooperative leadership in a nationwide effort; and for management of Federal lands for the broadest recreation benefit consistent with other essential uses.

—The states should play a pivotal role in making outdoor recreation opportunities available by the acquisition of land, the development of sites, and the provision and maintenance of facilities of state or regional significance; by assistance to local governments; and by the provision of leadership and planning.

—Local governments should expand their efforts to provide outdoor recreation opportunities, with particular emphasis upon securing open space and developing recreation areas in and around metropolitan and other urban areas.

—Individual initiative and private enterprise should continue to be the most important force in outdoor recreation, providing many and varied opportunities for a vast number of people, as well as the goods and services used by people in their recreation activities. Government should encourage the work of nonprofit groups wherever possible. It should also stimulate desirable commercial development, which can be particularly effective in providing facilities and services where demand is sufficient to return a profit.

The policies and programs that have since emerged at all levels of government have been designed to implement generally those recommendations. The Federal Government, through expansion of the Open Space Act,[2] the creation of the Bureau of Outdoor Recreation, and the establishment of the Land and Water Conservation Fund,[3] has implemented its major new role in this area, namely of assisting the states and local governments financially and with technical services.

The Federal role in the preservation of nationally significant scenic, natural, primitive, and historic areas has since been more extensively fulfilled through the creation of many new national parks and monuments and the establishment of the National Wilderness Preservation System,[4] and the National Trails [5] and Wild and Scenic Rivers Systems.[6] A Federal role has also emerged in the provision of regional recreation opportunities through the creation of national recreation areas and national seashores.

States and their political subdivisions have assumed the primary role as the major governmental

[1] Outdoor Recreation Resources Review Commission. *Outdoor Recreation for America* (1962).

[2] 42 U.S.C. §§ 1500–1500e, (1964) as amended, (Supp. IV, 1969).

[3] 16 U.S.C. §§ 460l–11 (1964), as amended, (Supp. V, 1970).

[4] 16 U.S.C. §§ 1131–1136 (1964).

[5] 16 U.S.C. §§ 1241–1249 (Supp. V, 1970).

[6] 16 U.S.C. §§ 1271–1287 (Supp. V, 1970).

direct supplier of most forms of outdoor recreation opportunity. Comprehensive statewide recreation plans have been developed by all 50 states, and some are undergoing third and fourth revision. Since 1965, states and local governments have added in the aggregate approximately 1.5 million acres of newly acquired land to their park systems and public recreation areas, bringing the total area in such systems to 36.5 million acres in the 50 states. Of the total national participation in outdoor recreation activity, based on data for the last year (1965) for which statistics are available, it is indicated that there were five times as many visits to areas administered by state and local governments as there were to areas administered by agencies of the Federal Government. This is readily understood since, as we have noted before, *Federal public lands* are seldom convenient to population centers while state and local facilities are.

State and local entities throughout the Nation have incurred substantial levels of indebtedness through bond issues and borrowings to finance expanded park and recreation area programs. State financial assistance programs to local government have been developed in many states in support of these expanded program efforts, and state and local expenditures for outdoor recreation land acquisition and facilities development have exceeded Federal Land and Water Conservation Fund and Open Space grants by many times over.

As indicated earlier in this report, there are a variety of types of public lands, ranging from desert and open prairies, with fragile soils, to heavily timbered and mountainous areas. Some of these lands have been set aside for specific forms of recreation, both passive and active, extensive and intensive. The bulk of the lands, however, have been managed under principles of multiple use, including outdoor recreation, and their suitability for such continued use is apparent.

Among those lands that have been set aside for specific recreation uses are national parks, national seashores, wilderness areas, scenic trails, and scenic and wild rivers, all of which implement the Federal role of supplying land for areas of national significance. While national forests were not established primarily for recreation purposes, some of the best recreation areas—particularly for skiing—are found on the national forests, and many recent acquisitions of specific parcels of land by the Forest Service have been for recreation.

The density of use varies widely among these different categories, and within categories. Wilderness areas, by definition, are intended to have limited use; some national parks and forests are subjected to bumper-to-bumper traffic and large numbers of people, while others have low rates of visitation.

The Commission's principal efforts have been devoted to an examination of the policies and practices related to the newly emerged intergovernmental division of responsibility for outdoor recreation. Generally, the public lands with which we are concerned fall into two categories in this respect.

The public lands in national parks, monuments, seashores, scenic and wild rivers, and wilderness areas appear to be within the defined Federal role category suggested by ORRRC. These are the lands of truly national significance that have unique scenic or natural conditions, and for which only the Federal Government can, as a practical matter, be directly responsible for protection and management. These lands make up 33.3 million acres of the 755.3 million acres of Federal public lands with which we have been concerned generally. Our efforts with respect to these kinds of lands were directed at examining management policies and associated issues.

The remaining 722 million acres of public lands are in the national forests, the wildlife refuge and game range system, and in unappropriated, unreserved areas administered by the Bureau of Land Management. Although specific recreation development policies for these lands are not well defined by statute, many administrative policies and on-going programs provide for their recreation development and use. It is this class of Federal public lands that the Commission has examined in the intergovernmental framework of national policy.

We believe it is especially important to define carefully governmental roles and responsibilities in the area of outdoor recreation. Because people from the beginning of our Nation have had free access to land, they traditionally have not paid for that use when it is nonconsumptive.

Therefore, private landowners have not generally made their lands available for public outdoor recreation purposes, and government has continued to act as the major supplier. The roles of each level of government should be explicit if duplication of effort is to be avoided and widespread public benefits are to be achieved.

Inventory of Unique Areas

> Recommendation 78: An immediate effort should be undertaken to identify and protect those unique areas of national significance that exist on the public lands.

There are areas in the National Forest System and on Bureau of Land Management lands that may qualify under existing standards for national parks, monuments, historic sites, wilderness areas, scenic and wild rivers, and national trails. They have not all

been inventoried or formally identified and proposed for designation. A number of such areas were brought to the Commission's attention through our study program and other sources.[7]

We believe a comprehensive inventory of these public lands, to identify all such areas, should be conducted as soon as possible, and that they should be assigned a priority for protection pending designation under established procedures. Because, in most cases, the procedure involves statutory designation, temporary withdrawals for limited periods will be necessary to protect values while awaiting formal designation.

The Commission believes it is particularly important to identify truly unique areas that would qualify as nationally significant on the public lands in Alaska. In view of the importance of completing the Alaska state land grant selection program, those remaining limited areas that are to be kept in Federal ownership indefinitely because of their truly national importance should be identified and withdrawn as soon as possible. However, this program should not interfere in any way with the regular continuation of the state selection program. *In any event lands suitable for state park or recreation use must remain available for selection by the State of Alaska.*

The identification of new areas for inclusion in the National Wilderness Preservation System, is continuing under the schedule established by the Wilderness Act of 1964.[8] According to the time limits set by that Act, the review of primitive areas of national forests and roadless areas of national parks and the National Wildlife Refuge System must be completed by 1974. *We believe that this timetable should be maintained and, further, that priority should continue to be given to review of those areas required by the Wilderness Act.*

There is nothing in the Wilderness Act to preclude additions to the National Wilderness Preservation System of lands not previously identified for review. Accordingly, while maintaining the priority for review of the areas designated in the Wilderness Act, we believe that the initial inventory and review of other areas should be started as soon as possible. In this way it will be feasible for the public land management agencies to make recommendations to the Department heads for consideration, and for possible Executive recommendation to Congress on an orderly basis after 1974 for the inclusion in the wilderness system of any key wild areas of public domain or national forest lands that qualify under standards recommended in this report.

State and Local Needs

Recommendation 79: Recreation policies and programs on those public lands of less than national significance should be designed to meet needs identified by statewide recreation plans.

The states are engaged in a sustained effort to meet the needs of their citizens for sufficient outdoor recreation opportunity. We believe those Federal lands that are available for outdoor recreation use should be taken into account by the states and by local governments when they develop plans for supplying outdoor recreation opportunity.

We believe that state and local governments should generally be responsible for the development and management of areas required for intensive recreation use to serve community needs. Subsequent recommendations set forth our proposals to implement this conclusion. However, even where there is a local need for recreation use, the Federal Government should remain responsible if the lands involved have been designated for another dominant or primary use. We also recognize that there may be other instances where it would be appropriate for the Federal Government to be responsible for the recreation area or to participate in the financing, development, and management.

In some instances, the state or local government may not be able to finance development and management by itself. In others, a state may not be willing to assume all of the responsibility to develop and manage a regional recreation area on public land because many potential users reside outside of the state. In the circumstances, we believe it would be appropriate for the Federal Government, through the land administering agency, to participate directly. We emphasize the necessity to share equitably in the costs of such joint undertakings. We believe it is undesirable for the Federal Government unilaterally to plan, develop, and manage intensive use recreation facilities installed primarily to meet state and local needs unless the states demonstrate an unwillingness to cooperate. However, where the states undertake the task, the use of Federal funds should not be precluded.

Public land areas of less than national significance identified by a statewide recreation plan as being necessary to satisfy state or local intensive recreation needs should be leased or transferred to the appropriate level of government for such purposes, unless overriding resource values require that they be re-

[7] The Nevada Outdoor Recreation Association, Inc., a private organization, has, for example, compiled the results of an intensive survey of scenic, natural, historical, and recreational resources on the public lands in Nevada. Some 350 sites and areas were included in this survey, which concentrated on little-known or previously unknown phenomena. This survey identified many locations deserving of protection.

[8] n. 4, supra.

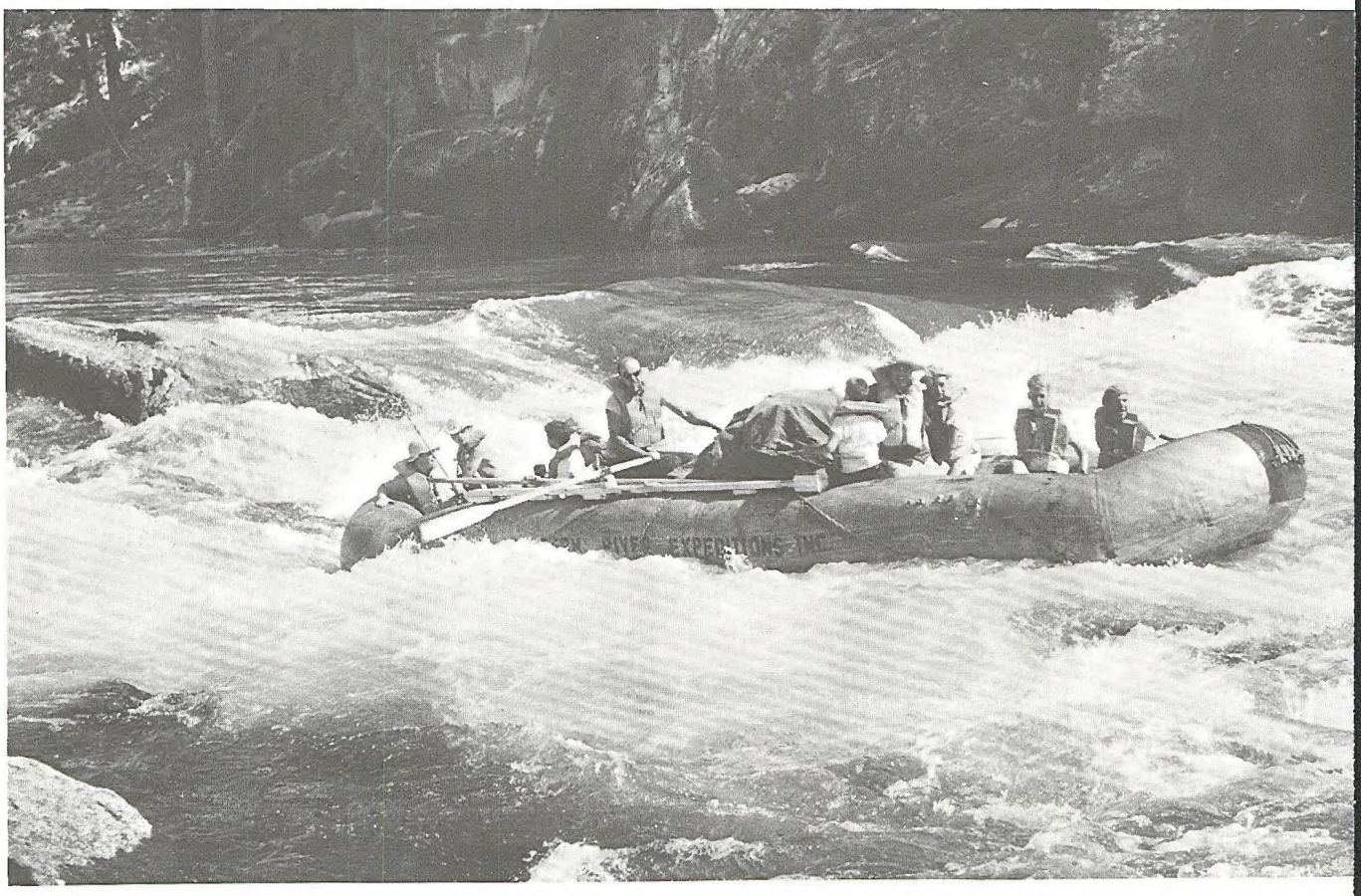
tained and used for other than recreation purposes. Except in those instances where joint Federal-state or local administration of intensively developed public land areas is justified, such areas should be transferred to state or local jurisdiction either by deed or by lease. This policy will permit state and local governments to spend funds and make improvements on such lands with tenure assured.

Federal Management of Local Recreation Areas

Parenthetically, we note our recognition above that state and local government units may not always be able to undertake the necessary development. Frequently, the public will be using the lands despite the absence of planned development and management. Protection of the area will require some Federal action and we do not intend to imply that the Federal Government should abandon its responsibilities.

The degree of Federal management will and must depend on several factors, of which the most significant is whether development is included in the approved statewide recreation plan. *In those instances where state and local governments cannot or will not accept a transfer or lease of the recreation area, we recommend that Federal land management agencies develop and manage intensive use oriented recreation opportunities, even though primarily of local, state, or regional significance, on public lands administered under general multiple-use policy if: (1) such development is called for by a preexisting statewide plan; and (2) as a general rule, the state or a local unit of government shares in the cost of development and administration of the area on an equitable basis. However, as indicated above, there will be instances where public use will require, and we recommend, installation at Federal expense of those minimal facilities needed to protect the area and regularize use even if local and state governments do not share in the cost.*

Our basic recommendation to transfer or lease lands to units of state and local government is consistent with the existing Recreation and Public Purposes Act. *We recommend that this basic policy be applicable to all classes of federally owned land, including lands in the National Forest System, both public domain and acquired, and to lands declared surplus to the needs of the United States, whether*



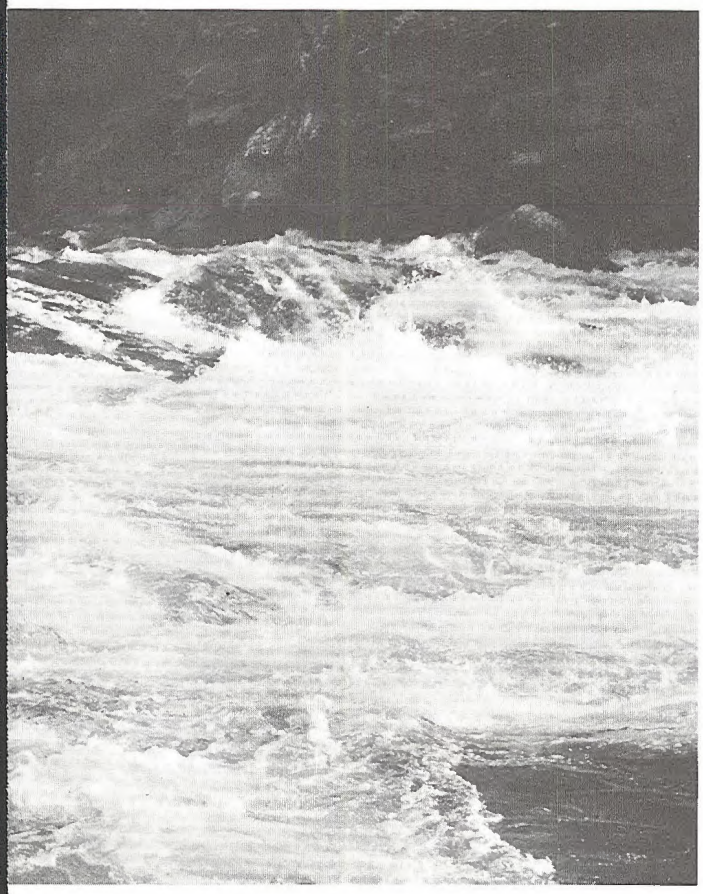
Our public lands support a wide variety of outdoor recreation use. Better guidelines will assure the continued enjoyment

they are acquired or public domain lands. This policy would not be applicable to any lands set aside for Federal management because of their national significance.

The Recreation and Public Purposes Act [9] now limits conveyances for recreation in any calendar year to 6,400 acres to the states and 640 acres to a political subdivision. Although we believe these artificial limitations are too restrictive, an area managed for multiple use should not be transferred out of Federal ownership until it has been classified in accordance with the program we recommend for classifying or identifying areas of recreation value. Since classifications are not immutable, changing conditions will permit the Federal Government to withhold from transfer lands for which it has an overriding need.

We believe that the specific acreage to be leased or transferred should be negotiated in each instance between the Federal Government and the state or the unit of local government that is to assume the management responsibility. The statutory authority therefor should provide that lease or transfer can be accomplished only when a definite program of land use has been developed and adequate financing has been assured. The type of recreation development proposed, the size of population to be served, the location of the lands, and the topography, relief, access, and other physical characteristics of the area will determine the most appropriate amount of land required in each case.

[9] 43 U.S.C. §§ 869–869–4 (1964).



of this priceless heritage in future years.

Lease or transfer of public lands to states or local governments in conformance with an approved statewide recreation plan should be at a price reasonable for the public recreation purposes the lands are to serve, which would be less than fair-market value. We believe that making Federal public lands available to state and local governments to assist them in meeting their outdoor recreation responsibilities is clearly in support of a governmental purpose and a strengthened federalism.

We are not endorsing a single price for all such transfers, nor do we recommend a merely nominal price policy. The Commission believes the administering agencies should consider the specific conditions in each case in determining, through negotiation, the extent to which the price should be reduced below the fair-market value of the land.

To implement this policy, we recommend that Congress provide guidelines that will require the following factors to be among those considered in arriving at the price: The amount of land being leased or transferred; the manner in which the United States acquired the property; the planned use of the property; and the necessary development costs; the relative financial capability of the governmental unit receiving the land; and the number of people to be served by the recreation opportunities that will be offered.

Lands transferred for recreation use should be subject, during a limited period, to a Federal right to require return of the land if it is used for a purpose other than that for which it was transferred. This is consistent with our general recommendation of such condition whenever land is transferred at less than full value.[10]

Reversionary provisions are employed now in transfers made under the Recreation and Public Purposes Act,[11] but the reversionary condition imposed is rigid and perpetual. We believe a more flexible arrangement should be adopted that will terminate Federal control over future use of the land after the basic policy objective has been substantially satisfied. Perhaps 25 years would be appropriate for this type of use. During this 25-year period, Federal administrators, under congressional guidelines, could either require the return of the land or waive the

[10] See Chapter Eighteen, Disposals, Acquisitions and Exchange, Rec. No. 116.

[11] n. 9, supra.

reversion if the state or local government wished to use the land for another purpose. Consistent with our general recommendations concerning disposals, upon such waiver payment should be made equal to the difference between fair-market value of the property at the time the land was transferred, and the lower price actually paid.

Public lands administered under general policies of multiple use should be made available at nominal cost to private, nonprofit groups for outdoor recreation purposes. Public lands in the National Forest System and those administered by the Bureau of Land Management have in the past been made available on either a long-term basis or by transfer of title at nominal cost to private, nonprofit or quasi-public organizations for various outdoor recreation uses. Boy Scout and Girl Scout, Campfire Girls, boys clubs, and other youth or welfare activities sponsored by church, civic, and fraternal organizations have been permitted to use and develop at their own expense public land areas for organization camp programs.

This is a desirable policy and should be continued. Generally, we believe this type of use should be provided for on a long-term lease basis rather than by transfer of title. Lease rates should be at less than fair-market value and should be determined on the same basis as rates for lease of areas to state and local government.

As a general rule, we believe that, when there is a conflict, development and use of a public land recreation area for general public use should take priority over allocation of the area to a quasi-public group. Likewise, public lands set aside primarily for their unique national significance should not be available for group use on a long-term, semiexclusive basis. We would, therefore, exclude national parks, wilderness areas, and similar categories of public lands from this policy.

Emphasis on the Federal recreation management of those public lands not classified as nationally significant should be placed on dispersed types of outdoor recreation requiring only minimum land development and supervision, and few facilities. We believe recreation management and development on these retained Federal lands should be primarily of the kind which supports more extensive types of activity such as hiking, back-country camping, nature study, bird watching, riding, cycling, hunting, and fishing.

The Federal multiple-use lands offer one of our best opportunities to supply large, extensive, and relatively undeveloped areas to accommodate these activities. This will require the construction and maintenance of more extensive trail systems, trail camping shelters and water supplies, and back-country campsites and sanitary facilities.

Most of this kind of development and the types of recreation activity it supports are compatible with the other resource uses that will continue to occur on these lands. With proper planning and appropriate use management, extensive recreation uses can be integrated well with timber land management and harvesting programs, watershed management, livestock grazing, some occupancy uses, and mineral development.

We believe this kind of recreation management and resource administration should be financed and administered by the Federal Government through the land managing agencies. Such development and use must be integrated with management of the land for other uses and values.

Direct Federal participation in meeting regional, interstate outdoor recreation needs should be on a joint venture basis with the states. National recreation areas, at least 10 of which have been established by the Federal Government are designed primarily to meet regional recreation requirements. They are being administered by Federal agencies and may contain land purchased with Federal funds or set aside from land already in Federal ownership, such as a national forest or Federal rangeland administered by the Bureau of Land Management.

We recognize the need for the creation of regional recreation areas that serve multistate populations, but believe that the states should participate in providing such areas. Some states may face legal difficulties in working together in a formal relationship, and particularly in spending their funds in other states. But we believe that the Federal Government should participate with the states in overcoming these difficulties and in meeting regional recreation needs. In particular, the Federal Government should participate by providing assistance in financing land acquisition and development costs.

We favor much more direct involvement by the states in location and development planning, and in assuming direct responsibility for the administration, operation, and management of these areas. We believe this form of cooperative policy produces a better balance between equity to the national taxpayer who now pays the entire cost, and more control over operating and maintenance policies by the regional public directly benefitted by these areas.

Bureau of Outdoor Recreation

Recommendation 80: The Bureau of Outdoor Recreation should be directed to review, and empowered to disapprove, recreation proposals for public lands administered under general multiple-use policy if they are not in general conformity with statewide recreation plans.

The Bureau of Outdoor Recreation was created in 1962 to provide both a focal point within the Federal Government for the administration of Federal intergovernmental programs in outdoor recreation, and to coordinate the activities of other Federal agencies with the objectives of these intergovernmental efforts. Although the Bureau has made progress in improving intergovernmental working relationships in outdoor recreation, we believe its efforts to bring other Federal programs into phase with the approved roles of the states, local governments, and the private sector have not been effective.

There are a number of reasons for this ineffectiveness, but we believe the principal one is BOR's relatively weak location in the executive branch structure. As just another bureau on an equal plane with many others in the Department of the Interior, it is questionable whether BOR can successfully coordinate even the policies and programs of its own sister bureaus.

We have considered suggesting the repositioning of BOR's Federal coordinating responsibilities to a location in the executive branch where that work could be accomplished with more decisiveness. *The Council on Environmental Quality should give a high priority to reviewing and recommending to the President the most advantageous organizational location for the coordinating functions now vested in the Bureau of Outdoor Recreation.* Alternatively, we also suggest that BOR's statutory requirements and authority to effect better coordination of Federal land administering functions should be strengthened. Because this strengthened authority would, in many respects, be a substitute for a more effective organizational placement in the executive branch, *we recommend that such new and strengthened statutory coordinating authority be vested directly in the Director of the Bureau of Outdoor Recreation.* The Bureau's relationship to any cabinet department would then be essentially independent, with the Department of the Interior providing only administrative support services. This veto authority would not apply to Federal recreation programs in areas of national importance.

General Use Fee

Recommendation 81: A general recreation land use fee, collected through sale of annual permits, should be required of all public land recreation users and, where feasible, additional fees should be charged for use of facilities constructed at Federal expense.

Public lands, which are administered and maintained at Federal expense, should be available for outdoor recreation use only if those using them pay for the privilege of doing so. Although the public, at one time, expected free access to the public lands for recreation use, that attitude has been changing, and we believe that participation in outdoor recreation of any kind should no longer be considered a free use of public land.

Even in areas where no intensive development has taken place by the installation of recreation facilities, such as tent and trailer camp sites, boat launching ramps with mechanical or hydraulic equipment or for swimming and similar activities, there are substantial Federal investments in multipurpose roads, hiking-trail systems, and sanitation systems. In addition to the capital investments, there are increasingly large annual costs for maintenance—of both the physical improvement and of the environment—and for litter collection and trash removal.

A general use fee would help defray these costs and simultaneously assure equitable treatment among all those having access to the public lands. Further, we submit that those who pay to enter or use recreation facilities will recognize the stake they have in the protection of the areas and make greater efforts, not only to take better care themselves, but also to make certain that others are more careful in their visits to the areas and their use of facilities. In addition, a general use fee would also assure equity to the operators of any competing private outdoor recreation area.

Because of the widespread nature of recreation use of most wild land areas, and the general lack of control of access to such lands, it is impractical and too costly to levy and collect a fee only for entrance to areas either generally or for each use occasion. We believe a general use fee can be most efficiently collected through the sale of annual licenses or permits. Sales can be made effectively and simply through sources such as the post offices similar to the manner in which duck stamps are sold, while at the same time permitting sale at entrances to national parks, for example, where personnel are stationed.

In the absence of a government-wide single annual fee for general use, the alternative would be admission or user fees for each individual class or type of recreation area. This would result in a higher total cost to persons visiting different classes of land, thereby penalizing those who can least afford the increased charge, such as retired persons living on a fixed income whose value is constantly being eroded through inflation. *We recommend that general use fees should not be designed to recover all costs of providing outdoor recreation opportunities on the public lands.* The general land use fee should, at the outset, be minimal ($1.00-$3.00) to assure that it is not discriminatory and to simplify its administration. We believe the revenue from such a modest fee would greatly exceed that under the present Golden Eagle

All recreation users of the public lands should pay a general land use fee. This can be accomplished through sale of annual public land outdoor recreation permits.

Program. Children under 12, welfare recipients, and persons over 65 years of age should be exempted from the payment of any fee.

In Chapter Nine, we recommend a Federal land use fee for hunting and fishing on the public lands. As stated in that chapter: "It is particularly appropriate that those who use the public lands to hunt and fish should pay an additional nominal fee for this special privilege."

The charging of entrance and road use fees should be discontinued when the annual outdoor recreation use permit is adopted. Even though personnel on duty may sell the permit we recommend, the cost of retaining personnel to collect entrance fees should be eliminated. No charge should be imposed merely for driving through Federal land areas on main transportation routes. The public has already paid for most main highway construction through the public lands from general taxes and from special taxes on gasoline, tires, and automobiles.

We recommend further that in addition to the general use fee, fees should be collected for the use of developed recreation areas constructed at Federal cost. The Outdoor Recreation Resources Review Commission recommended such a system of fees, and generally they are being collected. The vast majority of the states make charges for the use of campsites and various other facilities.

Fees for the use of facilities should be varied according to the quality offered, conditions of use, and comparability with charges for non-Federal recreation facilities, if any, in the vicinity. However, we do not believe that any fees of this nature should be levied on the basis of "what the market will bear" so as to bar the use of any facilities to those who cannot afford a high fee.

The Commission is further convinced that the public generally is basically honest and will pay both general use and facility user fees if they know that such fees are required. It is not necessary to have a large policing force. For the majority widespread dissemination of information concerning the program for the collection of fees will suffice; for the remainder it will be sufficient to know that—as in the case of a fishing license or motor vehicle operator's permit—if you are stopped by an official the failure to have it on your person will subject you to a penalty. *We recommend that a penalty be imposed for failure of a recreation user to have the permit in his possession on the public lands.*

Conflicts Over Uses

Recommendation 82: Statutory guidelines should be established for resolving and minimizing conflicts among recreation uses and between outdoor recreation and other uses of public lands.

Some of the sharpest public policy issues in recent years have arisen as a result of real or alleged conflicts between various recreation values and other uses of public lands, or between one and another type of recreation use. Most of those conflicts appear to fall in one of two categories: (1) conflict between the complete preservation of a relatively large area of land primarily for the purpose of maintaining the environmental status quo, and any type of use or development that disturbs, or would change, that environment; and (2) conflicts between recreation and other uses, or among different types of recreation, on lands where total preservation of a large environment is not the objective.

We believe that the statutory promulgation of meaningful guidelines for handling those conflicts or preventing them is essential to a more orderly and intensive administration of public lands in the future.

All nonconforming uses in national parks, monuments, and historic sites should be prohibited by statute. Mining, logging, overhead power line construction, high speed highways, industrial plants, dam construction, and other land uses that would alter or destroy the unique values for which these federally administered areas are created are generally prohibited by the statute establishing each area, or by the basic authority for the establishment and management of the system. There are exceptions for some types of areas in the National Park System, specifically Glacier Bay, Death Valley, and Organ Pipe Cactus national monuments, and McKinley National Park, where mining is authorized by statute.[12] Although attempts to mine in most of these areas appear to be quiescent, the standing statutory provision for such use is an open invitation to conflict. *We recommend that these provisions be repealed, and that Congress enact a general statute enumerating the types of uses and activities prohibited in all such areas now in existence or to be created in the future.* With respect to outstanding rights, Congress should authorize an active program to acquire such interests upon payment of just compensation to the owners. The Commission believes this action will contribute significantly to reducing conflicts and controversy over the use and administration of these kinds of areas.

Areas requiring intensive development and high rates of capital investment should be designated recreation dominant use zones. We believe a standard of this kind is particularly needed for recreation areas on lands administered under general multiple use policies. It covers a variety of outdoor recreation activities, but the primary criteria would be intensity of development and associated rates of capital investment. Ski slopes with advanced tow systems and associated public service facilities, high density resort developments, marinas, trailer courts, and full facility campgrounds are some of the developments that would be given dominant use classification under this policy.

Where other potential resource uses arise in these locations, recreation values would be given preference whenever conflicts occur. The extent to which other uses are permitted in the area would be determined by their compatibility with the recreation facility uses.

Congress should authorize and provide guidelines for the restricted use zoning of multiple use public lands to protect scenic values. This is in harmony with our general recommendations in Chapter Three. The enjoyment of scenery accounts for a significant amount of current recreation use in the public land areas of the United States.

[12] Herman D. Ruth and Associates, *Outdoor Recreation Use of the Public Lands*, App. II, pp. II B-2 and 3. PLLRC Study Report, 1969.

Land management agencies have employed roadside and lakeside zoning to preserve greenbelt strips and to control development and use for this purpose, but the practice has no statutory recognition. It holds much promise as a design tool for more effective environmental management, All uses are not precluded by such zoning, but are controlled to preserve the visual qualities of the near and distant landscape.

Public land sites with high quality outdoor recreation potential should be inventoried and classified in advance of development. Recreation use values should be given primary consideration in permitting future uses of the site resources and the nearby area. The Commission believes an inventory and classification of public land recreation site values will contribute much toward establishing a basis for minimizing conflicts.

Field examination of the public land base for unique natural, archeological, and geological features that do not qualify for national recognition or status should be another consideration in such classifications. Coordination with state and local recreation planning agencies to anticipate future needs for high density recreation should precede any zoning of these sites to restrict other uses.

A policy of recreation site relocation should be adopted to permit more flexibility in the resolution of conflicts between recreation and other resource uses. Land uses of a given site for various purposes frequently take place on different time schedules. It takes from 30 to 150 years to produce a harvestable stand of timber under good management for various tree species at different locations on the public lands. Even though these sites may be administered primarily for timber production, many of them are capable of supporting recreation facilities and use during most of the growing period up to the time of harvest. The same is true for mineral production and livestock grazing. With some land uses, the time phasing need only be seasonal.

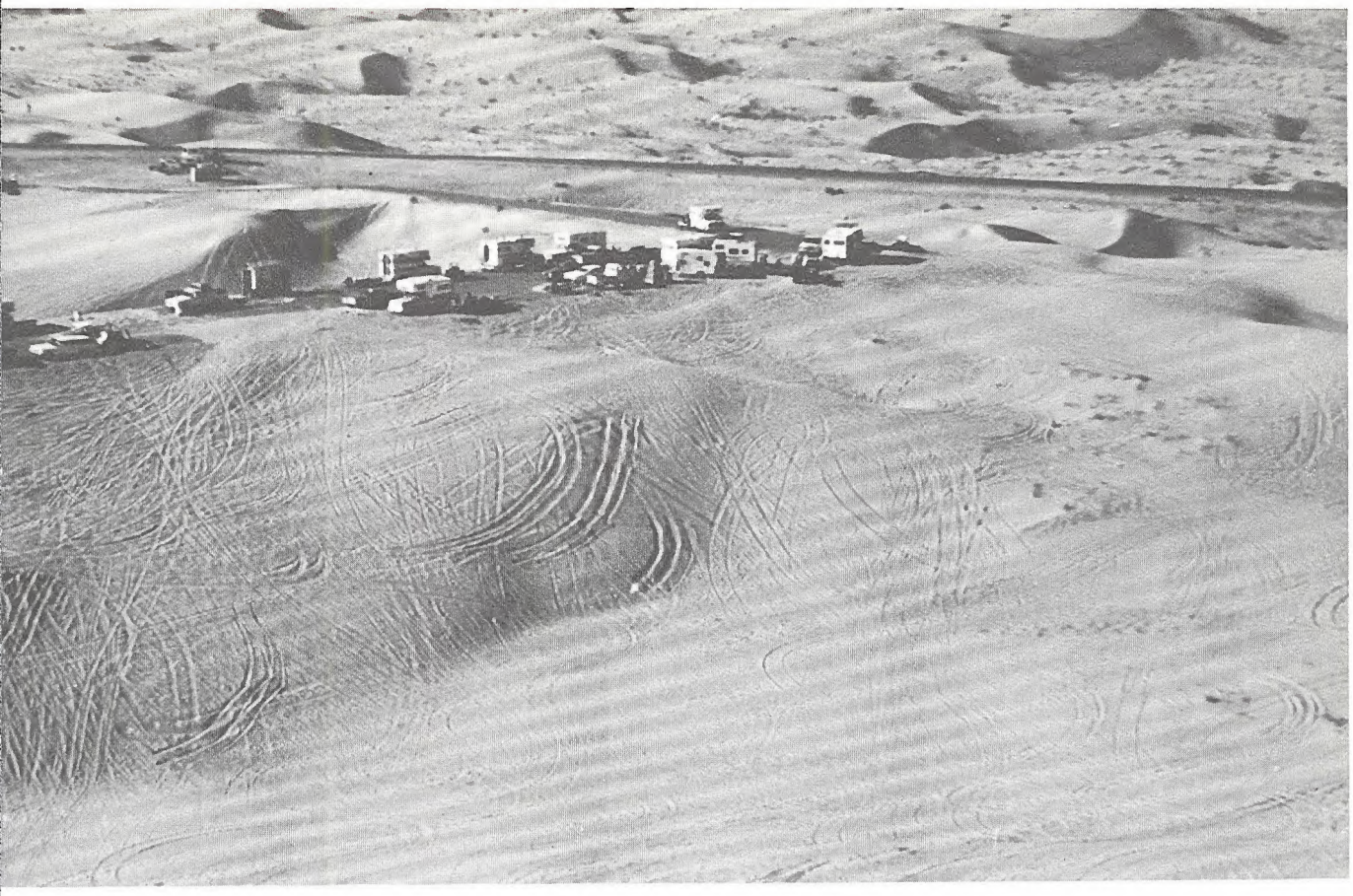
We believe the adoption of recreation operating systems that provide for shifts in site use on both a long and a short-term basis will permit the accommodation of greater recreation use of public lands, with a minimum of conflict involving other resource values. A policy closely related to the concept of relocation can also be employed to reduce opportunities for conflict. Generally, alternative sites in the vicinity should be considered before proceeding to select a recreation site that would compel serious restriction or the elimination of other uses in the area.

Regulation of Recreation Use

The values for which national parks and wilderness areas have been set aside should not be destroyed by an overuse for intensive outdoor recreation purposes. The existing authorities for administration of the national parks provide similar status to both the preservation of the natural environment for the future and the current use and enjoyment of the parks. Likewise, the Wilderness Act directs administration of wilderness areas for "the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness." [13] In order to protect national park and wilderness area values, action must be taken now.

Recreation use should be regulated to minimize conflicts with the natural conditions and with other uses of public lands. The values for which national parks and wilderness areas have been set aside should not be destroyed by an overuse for intensive outdoor recreation purposes. The problem of deterioration of both the environment and the recreation experience due to overcrowding has reached crisis proportions in many national parks, and is likely to occur more frequently in wilderness areas in the future. Annual visits to Yosemite National Park have risen from 640,000 in 1946 to 2.3 million in 1969. On Memorial Day weekend in 1969, over 70,000 visitors and their vehicles entered the 7 square miles of the Yosemite

[13] 16 U.S.C. § 1131 (1964).



Off-road vehicle use is becoming a threat to the physical environment in many public land areas.

Valley floor. This kind of pressure destroys natural environment and reduces the quality of a park visit for most of the people caught in the traffic jams. Similarly, the impact of concentrated uses, carelessness, and littering are destroying the undisturbed character and the fragile ecosystems of some portions of units in the Wilderness System.

Current attempts to reduce use pressures by adopting a policy of relocating accommodations and concession facilities outside the national parks may hold some promise for reducing the overcrowding, but increasing rates of national outdoor recreation activity, combined with population growth, may overwhelm these areas in spite of the accommodations relocation policies.

Problems of a similar nature occur on public land areas that do not have national significance. Although the threat is not to a unique area, the seriousness of deterioration of the resource is merely a matter of degree. In a sense the regulation and control of users is a greater problem on multiple-use lands because the Forest Service and the Bureau of Land Management do not have adequate staffing and funding to control the activities of the increasing number of people who use the public lands. The need to regulate authorized use of the public lands underscores our recommendation in Chapter Seventeen to provide land management agencies generally with police authority in order to control unauthorized use.

In the absence of trained personnel such as those employed by the National Park Service, increased use of public lands places disproportionate burdens on local police authorities. When the Federal Government, through the development of recreation facilities attracts additional people to an area, it should assume the responsibility of regulating and controlling them.

A fair and equitable rationing system, in line with the carrying capacity of parks and wilderness areas, should be adopted now to assure adequate controls over visitor use. Pricing should not be employed as a rationing method because that type of pricing would exclude all those unable to pay high fees. Parks and wilderness areas must be kept available to people regardless of their ability to pay. We prefer a first-come, first-serve reservation system administered by mail. Although this may appear to be an extreme and

Motorcycle racing can grind a desert range to pulp.

unwieldy measure, we believe its use is necessary to the survival of these areas as we know them.

Public Accommodations

> Recommendation 83: The Federal role in assuming responsibility for public accommodations in areas of national significance should be expanded. The Federal Government should, in some instances, finance and construct adequate facilities with operation and maintenance left to concessioners. The security of investment afforded National Park Service concessioners by the Concessioner Act of 1965 [14] should be extended to concessioners operating under comparable conditions elsewhere on the Federal public lands.

In areas of national significance administered by the National Park Service, the Federal Government customarily has sought to assure that adequate accommodations are available to the public. The typical device used to carry out this responsibility has been a concession agreement with a private enterprise. Among the types of facilities and services made available by concessions have been hotels, motels, food service, laundries, guide services, beach and bathhouse operations, and boat rentals. The concession system ordinarily includes the regulation of the quality of service offered and the prices charged for these services.

In other Federal land areas, public accommodations are generally made available under special-use permits, and are treated as occupancy uses of the lands involved. In these areas, the Federal Government's relationship to the operator is comparable to

[14] 16 U.S.C. §§ 20–20g (Supp. V, 1970).

Trail riding is a favorite of wilderness lovers.

that of any other landlord and tenant. The types of facilities to be installed are usually controlled in order to assure compatibility with the environment and with other permissible public land uses in the area. However, it is not customary for a Federal agency to regulate the quality of service offered by the permittee or the prices he may charge the public.

Concession Policies

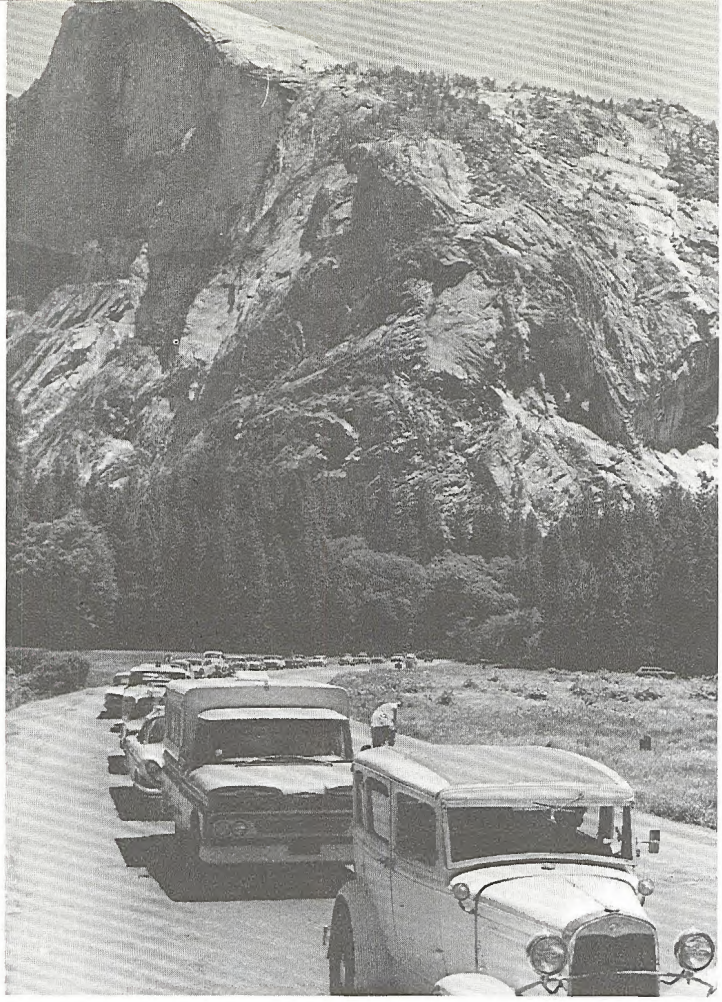
In the Concessioner Act of 1965,[15] which applies only to the National Park Service, Congress declared that it was the responsibility of the Federal Government "to take such action as may be appropriate to encourage and enable private persons and corporations . . . to provide and operate facilities and services . . . desirable for the accommodation of visitors."

We approve the principle of the 1965 Act and believe that Congress should extend it so that it is applicable to other Federal areas where Congress finds that the Government should assume a greater responsibility for providing public accommodations.

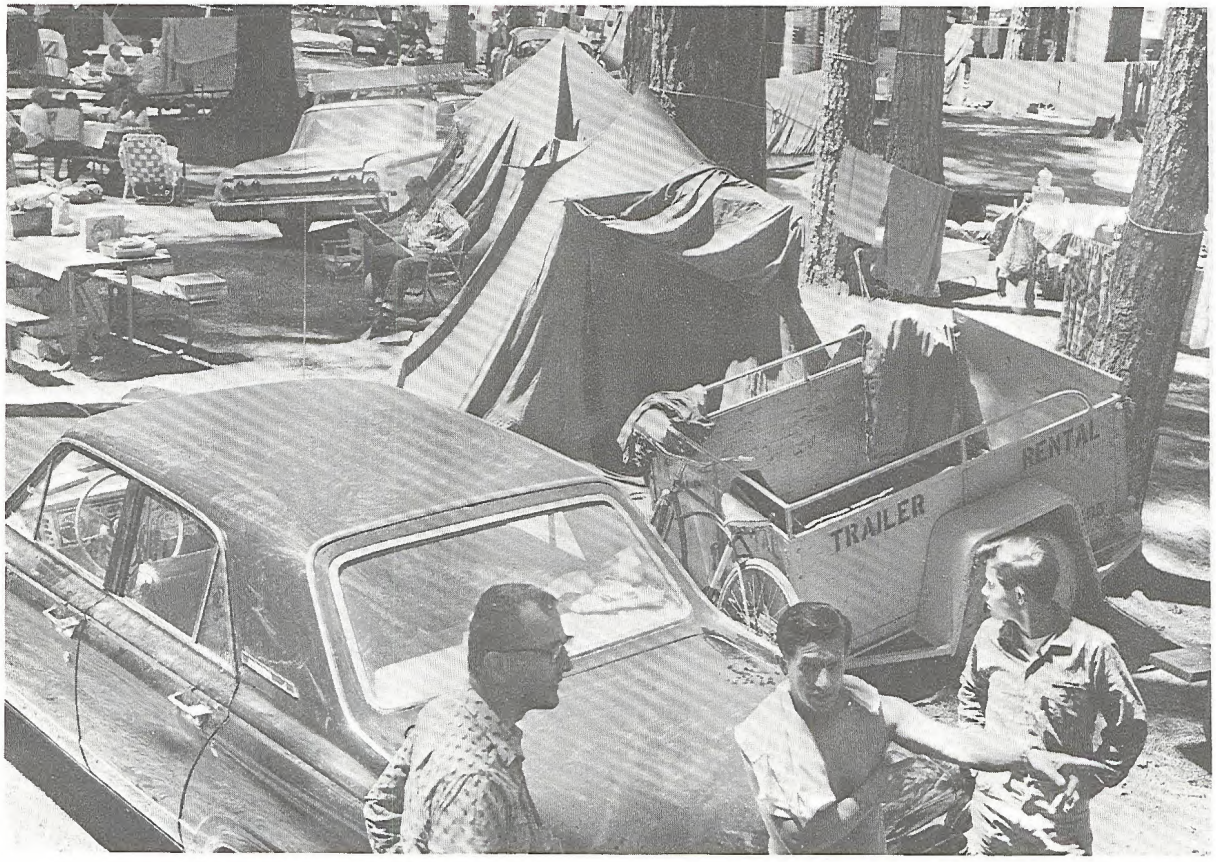
The use of private capital and expertise in operations such as hotels and restaurant management should be utilized wherever the character of the area and the density of use is attractive to private enterprise. However, we do believe that existing concession operations could be modified in certain respects to improve the services offered to the public.

A range of services should be available to the public. While we insist that quality standards should

[15] 16 U.S.C. § 20a (Supp. V, 1970).



Overuse of some areas has reached crisis proportions. Both views are of Yosemite National Park.



be maintained in providing public accommodations, we have observed that the kinds and costs of overnight accommodations and food services in these areas are too costly and too limited in choice for many prospective users. In order that various income levels within the public may be served, greater variety should be available in concession operations. Where it proves impossible to provide an adequate range of facilities and services through private enterprise, the Federal Government should furnish these services directly.

The Federal Government should finance and build public accommodations in areas that do not attract private capital and lease them to private concessioners. Federal agencies already contribute substantially to making concession operations attractive to private enterprise. As a general rule, they assume the costs of street preparation and utility services of various kinds. In the typical National Park Service area these represent about half of the capital costs.

Nevertheless, there are areas of national importance which are so remote that private enterprise will not assume the business risks of the use facilities without additional assistance.[16] Where it can be clearly demonstrated that positive efforts have failed to solicit the participation of private capital, we believe it would be entirely appropriate for Federal agencies to construct the needed facilities and have them operated by qualified concessioners.

Increased emphasis and special attention should be directed to the credit requirements of Federal concessioners. Concession enterprises have experienced difficulty in obtaining needed financing because of the high risk and low profit nature of their operations. The Commission believes that the Small Business Administration should make its direct loan programs more readily available to these concessioners.

Many concessioners require substantial amounts of long-term credit. In these cases, we believe it would be appropriate for the Federal Government to guarantee loans. This would be a reasonable extension of the Federal responsibility to assure adequate public accommodations in areas of national importance.

The security of investment offered under the Concessioners' Act of 1965 should be extended. The 1965 Act recognizes a possessory interest in facilities constructed by concessioners and provides for compensation for their values upon termination of the concession agreement. We believe that this policy is sound and should be uniformly applicable. However, we understand that the National Park Service does not recognize such an interest where the concessioner improves or adds to government-built facilities. Since all such concessioner improvements become the legal property of the United States, we see no reason for any such distinction and believe that the concessioners in such cases should be recognized as having a compensable interest.

Concession privileges should be priced so that rates charged the public for concession services can be kept at a reasonable level, and quality service to the public can be sustained. Current practices in setting payment by the concessioner to the agency for the lease or concession privilege appear at times to reflect a primary Federal objective of revenue production. The Commission believes that revenue production should be subordinate to maintaining a high quality of service at reasonable prices for the public. If it is necessary to reduce the Federal return from the concessioner to permit him to maintain a viable operation and still keep service quality high and prices reasonable, that is the course that should be followed.

We believe it is necessary, however, to charge a concession fee sufficient to avoid giving public land concessioners undue economic advantage over private commercial interests operating similar facilities in the vicinity. Application of this guideline will tend to preserve a healthy climate for expansion of the services and facilities available in the vicinity, which the Commission believes is a desirable objective.

Development in Multiple Use Areas

> Recommendation 84: Private enterprise should be encouraged to play a greater role in the development and management of intensive recreation use areas on those public lands not designated by statute for concessioner development.

Although there should be control over prices charged users to assure that they are reasonable, and construction standards should be set to assure that facilities are adequate, we believe more initiative should be directed to obtaining the development and operation by non-Federal entities of facilities for intensive use in areas designated for recreation as a dominant or secondary use. Such areas would be ones that the Federal Government should not dispose of but which are not made eligible for facility development under the Concessioners' Act of 1965 as discussed above.

Elsewhere in this chapter, we recommend that public lands needed for intensive recreation develop-

[16] For example, the National Park Service constructed accommodations at Glacier Bay National Monument in Alaska in 1966 and leased them to a concessioner. These were the first overnight accommodations at this relatively remote location.

ment, if specified in a statewide recreation plan to provide recreation opportunities in the community, should be transferred or leased to state or local governments. Whether it is because the land is not designated in a statewide plan or for some other reason that the state and local government cannot accomplish transfer or lease, *we recommend as a corollary policy, state and local government should be afforded a priority in the award of concession contracts for commercial-type intensive recreation developments of all types on multiple-use public lands.* Some state governments have already entered the resort management field in a direct effort to encourage tourism, provide variably priced accommodations, and promote local economic growth.

Within the controlling policy favoring development and administration by state or local government, we believe there is opportunity to encourage private capital to undertake construction of facilities and their operation.

Classification System

Recommendation 85: Congress should provide guidelines for developing and managing the public land resources for outdoor recreation. The system of recreation land classification recommended by the Outdoor Recreation Resources Review Commission should be refined and adopted as a statutory guide to be applied to all public lands.

Public lands can and do support a wide variety of outdoor recreation uses. Activities that take place on the public lands range from wilderness backpack camping and white-water canoeing, through a vacation stay at a national park lodge, to car camping in a modern national forest campground or picnicking at a roadside rest area along the highway that passes through a Bureau of Land Management grazing district.

Policy standards for deciding how much money to spend on which kinds of recreation development on these lands, where the development should be located, how much of each kind of recreation opportunity to provide, and when to furnish it, are not well developed. Such standards are required for national parks, monuments, and recreation areas as well as for other classes of public lands, including those where recreation is not designated as the dominant use.

In the section of this chapter addressed to resolving and minimizing conflicts among recreation uses and between outdoor recreation and other uses of public lands, we note a dual objective in the establishment of national parks for preservation of the natural environment and current use and enjoyment. Accordingly, even though it is clear that some development should take place, it is not an easy task to determine where to locate campgrounds, how large each one should be, and how much of the area of each park should be taken up with roads, overnight accommodations, food service facilities, hiking trails, and backcountry campsites.

The problem is much more complex for national forests and the lands administered by the Bureau of Land Management, because the lands are susceptible to management for all kinds of uses. Some kinds of recreation uses require no specialized development, and land can be used in its wild condition for these purposes. Other types of recreation activities require facilities near water or roads.

Several of the policies we have recommended earlier in this chapter will, we believe, provide better guidelines than now exist for determining the kind, amount, and location of different recreation opportunities that should be furnished on public lands. Relating some classes of public land availability to statewide and local needs, as we have recommended, will provide some guidance that is not now applied.

The Commission believes that a great deal of additional work needs to be done to develop better working standards for this purpose.

The standard system of recreation land classification recommended by the Outdoor Recreation Resources Review Commission should be improved and formally adopted by Congress for application to all public lands. The Outdoor Recreation Resources Review Commission proposed a recreation land use classification system which the Bureau of Outdoor Recreation has attempted to apply to all Federal lands with only limited success. The major difficulty lies with the inadequacy of the definition of recreation developments and uses associated with Class III of that classification system—Natural Environment Areas. Nearly 300 million acres of the lands under study by this Commission are rated as Class III lands. The other 5 classes of areas used in the classification system appear to be adequately defined and usable.

We believe that improvement of the existing classification system, a statutory requirement that it be used, and its use for planning recreation use on public lands will provide an improved basis for determining investment needs on the different classes of land identified in the system.

Standards that qualify an area for a national park or a wilderness area should be refined. Standards that have been in use for a long time by the National Park Service as to what constitutes an area qualified for national park or national monument status are objective to the extent which they can be, but subjectivity in their application is difficult to avoid. We

Unique areas need to be so classified.

believe the Congress should require a full study and report on this matter from the National Park Service as a basis for assisting it in evaluating future park proposals.

There is continuing controversy over the question of what conditions constitute qualification of an area for inclusion in the wilderness system. This is particularly true for national forest primitive areas that are being reviewed under the schedule established by the Wilderness Act for additions to the system. Disputes most frequently arise over whether "wildness" alone constitutes qualification, regardless of whether the area has other use potential, or whether some combination of "wildness" and "uniqueness" is the better measure of an area's worthiness to be given statutory protection as wilderness. We believe the latter is a better standard, subjective as the condition "unique" may be.

The Bureau of Outdoor Recreation should be required to develop and submit to Congress within 2 years standards for evaluating and investing in outdoor recreation development on public lands. We believe there is an urgent need to bring more reason and order to investment planning and subsequent budgeting for outdoor recreation development on public lands.

There have been numerous attempts to develop consistent and rational approaches to analyzing alternative recreation investments. While these have not been wholly successful, we believe they provide a basis from which the Bureau of Outdoor Recreation can develop acceptable standards. We are concerned that standards be provided as soon as possible to replace the current concept of meeting "projected demands" for recreation developments. Since recreation on public lands has been treated as a "free good" in the past, the demand for it tends to expand indefinitely as long as more developments are provided. This is not a good basis for allocating scarce tax dollars to alternative uses of the public lands.

Factors that should be considered in Federal recreation investments should include as a minimum: expected use rates, investment and administrative costs per unit of expected use, expected net impact on regional economies, the opportunity cost of other uses of the land that will be foregone, impacts on the environment and comparisons with alternative developments.

Access

Recommendation 86: Congress should authorize a program for acquiring and developing reasonable rights-of-way across private lands to provide a more extensive system of access for outdoor recreation and other uses of the public lands.

Our studies show that about 90 percent of the land area and nearly all of the streams and lakes on public lands are, as a matter of policy, open or available to the public for outdoor recreation of one kind or another. Yet, in many instances, the public is not able to gain entry to large areas of the public land. This is caused in part by the lack of clearly visible identification of public land boundaries; in part by the physical remoteness of public lands from established roads and highways; and in part by the control of access and entry to public lands by private landowners.

Where fences are located on Federal land, the public tends to assume that the lands are private if they are not otherwise marked. We urge the administering agencies to expand their recent efforts to identify the public lands, and we support larger appropriations for this purpose.

All of the agencies have provided some access into at least the major units of their holdings. In many instances, however, there are great distances along the perimeters of large blocks of public lands where there is no method or means of entry.

We believe that Congress should provide the legal authority and budgetary support for the acquisition of public rights-of-way across private lands. This would be followed by appropriate forms of construction or development to provide the physical means of using the rights-of-way. The construction of improved roads would not be necessary in all cases; the provision of foot trails or jeep roads may be sufficient in many circumstances.

Some states have engaged in similar efforts to provide public access to land and water for hunting and fishing purposes in recent years. The mutuality of Federal and state interest in the field of outdoor recreation, and the importance of treating the private property rights involved with sensitivity, requires an effort that we believe can best be carried out cooperatively.

The Congress should consider the possibility of leaving the actual acquisition of rights-of-way with the states. The Federal Government would then work closely in planning the route selection, participating in the financing of the cost of rights-of-way acquisition, and financing the necessary development of the access, once the rights-of-way have been obtained.

Land administering agencies should have statutory authority to require that public land lessees and permittees grant reciprocal public right-of-way across private land under certain circumstances. The Commission has been advised that there have been instances where the owners of adjacent or intermingled lands hold privileges to use the public lands, but block public entry through control of the only existing access routes.

We have considered carefully whether the Federal Government should use its power to grant or withdraw land use privileges to require, as a condition of the lease or permit, that the lessees give rights-of-way and permit public entry through their property to the public lands.

The Commission has concluded that such a requirement should not be a mandatory condition of all leases and permits issued. It is unnecessary in most cases and is undesirable as a matter of principle. Congress should, however, provide general authority to the administrator to require that such rights-of-way be made available as a condition of extending, renewing, or initially obtaining a lease or permit in circumstances where, because of topography, relief, or geographic conditions, the landowner controls key access to significant areas of public land and willfully blocks an important access route.

Such authority would be exercised with careful discretion and with consideration of the rights and privileges of the landowner. Compensation should be afforded in the form of reduced charges for public land use or otherwise. Provisions would be made for appropriate control of the public entering and crossing the property, and for public financing and maintenance of the road or trail made available.

Land Acquisitions

Recommendation 87: The direct Federal acquisition of land for recreation purposes should be restricted primarily to support the Federal role in acquiring and preserving areas of unique national significance; acquisitions of additions to Federal multiple use lands for recreation purposes should be limited to inholdings only.

The Commission believes that the Federal role as a direct supplier of recreation land suggested by ORRRC, which we endorse, be reflected in its land acquisition policies for recreation purposes. Federal purchases of land should be limited to new national parks, additions to the wilderness system when necessary to round out or protect a unit, additions to the system of national trails and wild and scenic rivers, and of other areas designated as being of national significance, e.g., national seashores.

We have suggested earlier that the states participate more actively and directly in a program to meet regional, interstate recreation needs, and that the current role of the Federal Government in this program be modified to provide financial aid in land acquisition and development. We believe the states should acquire and manage these areas. Adoption of this policy would substantially reduce the current level of Federal expenditures from Land and Water Conservation Fund allocations, and this expenditure would be shifted to support joint Federal-state efforts.

We have recommended that Federal public lands generally administered under multiple-use policy be made available to state, local governments, or private concessioners for intensive use types of development; administering agencies should develop such lands for extensive, resource oriented recreation. *We recommend that additions to these multiple-use lands by direct acquisition for recreation use should be confined to inholdings or boundary adjustments to facilitate resource oriented recreation use of the Federal public lands.*

Land and Water Conservation Fund

Recommendation 88: The Land and Water Conservation Fund Act [17] should be amended to improve financing of public land outdoor recreation programs. During the interim period until the recreation land use fee we recommend is adopted, the Golden Eagle Program should be continued. After essential acquisitions have been completed, the Land and Water Conservation Fund should be available for development of Federal public land areas.

The Land and Water Conservation Fund was created in 1965 to assure a more certain method of financing both Federal grants of monies to states for recreation, and various Federal recreation programs. The premise of this law is that the fund would be continuously replenished by revenues from fees paid by the users of federally administered recreation areas, and from certain other sources. These replenishment arrangements have not worked well. Income from user fees and charges is running about 10 percent of total annual outlays from the fund, which was budgeted at $124 million in fiscal 1970. Income to the fund from other sources (motor boat fuel taxes, etc.) has been inadequate to finance the balance, and, as a result, the fund has operated in debt by borrowing from the United States Treasury since its inception.

We believe that, in the period for which it was established, the Land and Water Conservation Fund should be retained as the principal mechanism for financing both Federal-state aid and Federal land recreation programs. A more reliable means of replenishing the fund to assure its solvency must be adopted. In 1968, Congress amended the L&WCF

[17] n. 3, supra.

Act to provide that revenues from Outer Continental Shelf mineral leasing programs could be used to guarantee an annual level of $200 million to the fund.[18] This provision ends in 1973.

We endorse current legislative efforts to assure that the Land and Water Conservation Fund is maintained at a proper level. The backlog of authorizations for recreation projects makes this mandatory.

We are, however, opposed in principle to the earmarking of Federal receipts and, therefore, do not recommend that the Land and Water Conservation Fund become a permanent vehicle for the financing of public land outdoor recreation programs. It is our belief that, through an accelerated program of funding, the United States can keep its commitments to its citizens for the establishment and development of recreation areas and then rely on the normal appropriation process.

Once acquisition of new sites has been completed, the fund can and should be used for development purposes. The development of facilities on recreation areas fulfills the Government's promise to the people that the areas will be made available.

Finally, we recommend that access to the Land and Water Conservation Fund should not be limited to particular land management agencies having responsibility for outdoor recreation activities. Specifically, for example, we recommend that Bureau of Land Management outdoor recreation programs should be considered eligible on the same basis as other recreation programs for participation in the Land and Water Conservation Fund.

[18] 16 U.S.C. § 4601–5(c) (Supp. V, 1970).

Occupancy Uses

PUBLIC LANDS are used in a great many ways solely for their location or site values, with no relation to the utilization or extraction of resources. Among such nonresource uses are rights-of-way for transportation, utility, and commercial facilities. Others are residential, commercial, and industrial in character, or are for governmental services—Federal, state, or local. Such uses are provided for either by disposal or, in the case of retained lands, by permit, lease, license, or other formal document.

From the earliest days of the Republic, canals and roads were significant uses of the public lands. Railroad uses became important well before the Civil War. Settlement and revenues were the principal objectives of public land policy, and to those ends the public sale of Federal land was made easy and minimum prices were kept low. Occasionally, special sales of townsite lands were authorized, where unusual demand was experienced.

Customarily, occupancy uses were handled on a case-by-case basis. When more general legislation was enacted in later years, it was narrow in scope, was often inconsistent, provided few if any legislative standards, and left the terms and conditions of use largely to administrative discretion. Even the types of tenure available have varied widely. Under one law, fee title would be provided, while under another, revocable permits were authorized for the same kinds of uses. Many of the existing laws are no longer timely and should be revised.

Need for Uniform Legislation

Recommendation 89: Congress should consolidate and clarify in a single statute the policies relating to the occupancy purposes for which public lands may be made available.

At present there are a great number of disparate laws making various provisions for occupancy uses. Some of them only relate to specific classes of public land, and some only to lands administered by particular Federal agencies. They also vary according to the types of uses and their relation to each other. Perhaps even more disturbing is the fact that some even overlap and provide for vastly different tenures, terms, and conditions for the same type of use on the same land, with the choice of alternative left to the public land agency involved.

It seems clear to the Commission that these laws should be simplified and codified with greater uniformity among lands, agencies, and uses. Most of the recommendations in this chapter should be incorporated into such uniform legislation.

Some public lands should be excluded from certain kinds of occupancy uses. Certain types of occupancy uses of public land are incompatible with the primary purpose for which the lands have been set aside. Restrictions by statute on occupancy uses of certain retained lands, particularly special purpose areas, have also been common where such uses would be detrimental to the primary purposes for which those lands were set aside. For example, by statute, roads are not permitted in wilderness areas; hydroelectric projects may not be licensed by the Federal Power Commission in national parks; and highways may not intrude on wildlife refuges and parks unless other routing alternatives are not feasible.

The Commission believes that the exclusion of all occupancy uses which would be detrimental to the primary use should be by statute, rather than left to the administrative discretion of the controlling agency.

Classification of Lands for Occupancy Uses

Recommendation 90: Where practicable, planning and advanced classification of public lands for specific occupancy uses should be required.

Some occupancy needs for public lands can be predicted and planned well in advance of actual use.

Classification has been useful in many instances to establish the pattern of land use and development which will make the best integrated use of the land and achieve the greatest land value and stability.

The Commission believes that lands should be classified for occupancy uses for which the lands appear best suited as early as such prospective uses can be identified. This would provide the basis for sound long range planning for these uses on both public and related land, and would help assure interim uses that are consistent with the probable ultimate occupancy use.

In many instances, classification in the broad category of urban use for the expansion of existing communities would be appropriate as a first step. More specific classifications within such areas would then be practical and beneficial as it becomes clearer what the form of development should be. This would include the designation of lands which are intended to be available to non-Federal entities for public uses like parks, schools, and utilities, and of lands where industrial use should be excluded or anticipated.

Unavailability of Suitable Private Land

Recommendation 91: Public land should be allocated to occupancy uses only where equally suitable private land is not abundantly available.

We do not believe it is advisable to attract a disproportionate use of public lands for transmission lines, industrial sites, pipelines, canals, roads, sewage disposal plants, and refuse dumps and remove them from other productive uses, while equally suitable private lands stand idle. Disposal of public lands for occupancy uses where equally suitable private lands are readily available also can lead to an undue depression of private land values.

Applicants for Occupancy Uses

Recommendation 92: All individuals and entities generally empowered under state law to exercise an authorized occupancy privilege should be eligible applicants for occupancy uses, although a showing of financial and administrative capability should be required where large investments are involved.

Lands generally should be allocated competitively where there is more than one qualified private applicant, but preference should be given to state and local governments and nonprofit organizations to obtain land for public purposes and to REA cooperatives where incidental to regular REA operations.

Many of the statutes regarding occupancy uses are silent or unclear about the qualifications of applicants for the rights or privileges that they provide. This has resulted in gaps and uncertainties which have been dealt with by administrative action, not always in a consistent and comprehensive fashion. The Commission could find no sound reason to exclude any individual or entity from any authorized occupancy use of public lands.

Occupancy uses involving heavy investments are generally of an exclusive nature which preempts other productive uses that could be made of the area. Committing public land resources to ventures that are unlikely to be successful poses a risk of wasting such resources. Failure can also lead to serious economic setbacks for the affected regional public, as well as the purchaser.

The Commission believes that where lands are disposed of for occupancy uses, public and publicly oriented entities which intend to provide continued public use of the land should be given preference over other applicants. The preference we recommend is a right of first refusal. Long range planning by these entities would be facilitated by providing them with greater assurance that they can secure land when needed for public purposes.

At the same time, the Commission is of the opinion that as a general rule, where there is more than one qualified applicant for land for an occupancy use, competitive bid is the most equitable method of allocation. This method results in the greatest monetary return to the Government and generally, also, in the employment of the land for its highest and best use.

We recognize that social considerations might justify exceptions in certain circumstances. Also, there might be situations where environmental or other concerns are so important that the plan of use is of equal or greater importance than the revenue that would be derived. For example, under the Federal Power Act, hydroelectric projects are licensed to the applicant whose proposed project is "best adapted to develop, conserve, and utilize in the public interest the water resources of the region." [1] Such a principle might also apply in selecting a developer interested in purchasing public land for a new city, since the best overall plan might weigh more heavily than land price considerations. Any such exceptions should be expressly authorized by Congress.

Disposal Rather Than Lease or Permit

Recommendation 93: In general, disposal should be the preferred policy in meeting the need for occupancy uses that require substantial investment, materially alter the land,

[1] 16 U.S.C. § 800 (1964).

and are comparatively permanent in character, except where such uses are nonexclusive.

The Commission finds that there are no explicit guidelines or criteria set forth in existing laws and regulations regarding the nature of occupancy uses for which land will generally be disposed of rather than retained and managed.

No reason is apparent to the Commission for the retention of public lands that are needed for occupancy uses which require long-term private investment, materially alter the land and virtually exclude other use of the land surface. Examples of this type of use are schools, electric substations, canals, reservoirs, industrial sites, and commercial building sites. The limited tenure provided by leases or permits for such use results in uncertainty and risk for the user, and creates problems in financing new developments or improvements.

The retention of such land is also an unnecessary continuing burden and cost to the Government. The Commission believes it is in the public interest to dispose of such lands, and recommends that statutory authority for such disposal be explicitly provided.

However, many occupancy uses which require a large investment and are relatively permanent do not require exclusive use of the surface. Other uses compatible with the occupancy use are often possible. In such cases, the land should be retained so that other types of users may benefit and the Government may continue to manage the land for the compatible uses.

Typical nonexclusive types of uses which the Commission believes do not generally justify disposal of public lands include electric transmission lines, communication lines, pipelines, and access roads.

Many of these nonexclusive uses lend themselves to application of the corridor concept on public lands, under which the joint use of facilities and the maximum concentration of similar facilities in a single area are encouraged. This would reduce the acreage of public land needed to accommodate these uses, minimize the environmental impact, and reduce conflicts with other resource uses.

A corridor policy would mean lower clearing, construction and maintenance costs, and lower utility rates to the rate-paying public. However, where public land on which a term lease or permit exists is disposed of, the new owner would control the charges, terms, and conditions of renewals. This problem would be avoided if Congress would provide by statute for the granting of perpetual easements for nonexclusive uses which involve heavy investment and where it is anticipated that the use will continue indefinitely.

Consistent with our general recommendations on pricing, *we recommend that transfers and leases be at market value.* We believe the principle of fair market value pricing treats equitably the various interests involved, including the general taxpaying public and prospective users competing for the land. Furthermore, it generally encourages the highest and best use of the land.

Leases and permits granted for less than market value in some instances acquired a value which has been captured by the user upon sale of the privately owned improvements. This has been particularly evident in the charges made for vacation summer homes, where the supply is very limited and permits have been transferred to the new owner upon sale of the improvements. Land managing agencies should develop consistent means of applying the market value basis in leases and permits for occupancy uses.

However, transfers or leases to other governmental entities for public purposes should be made at less than market value, with appropriate limitations. Existing law provides for the disposal or use of certain public lands to non-Federal entities for public use at less than market value in certain situations.[2] The Commission believes than any conveyance of public land for a public purpose to a state or local government for less than market value should provide for a possibility of reverter, in accordance with our general recommendation on this point in Chapter Eighteen.

Tenure

Recommendation 94: Where occupancy uses are authorized on retained lands by permit, lease, or otherwise, (a) the term and size of permits should be adequate to accommodate the project and the required investment; (b) compensation should be paid when the use is terminated by Federal action prior to expiration of the prescribed term; and (c) a preference right to purchase should be accorded to such users dependent on the lands if they are later offered for disposal.

Concern has been expressed to the Commission over current limitations on the length of permits or leases in some cases. Existing law provides for leases of up to 50 years for some uses and much shorter leases, term permits, or annual permits for many other uses. Often the term for which a permit or lease can be given is shorter than that needed to amortize the capital investment on, or dependent upon the use of the land. In such situations the user

[2] Daniel, Mann, Johnson & Mendenhall, *Federal Public Land Laws and Policies Relating to Use and Occupancy*, Ch. III, pts. II D, II E. PLLRC Study Report, 1970.

must place full reliance and faith in the administrator to renew periodically the authorizing instrument, interjecting an unnecessary risk and uncertainty into the user's plans and operations. Such insecurity may make it difficult for users to obtain financing for development or improvement.

In many situations, even where substantial investments will be made, Federal agencies have made a practice of permitting occupancy uses under an annual permit system in which the permits are generally renewed every year. The permittees frequently have come to treat the rights to use the land as virtually perpetual, so long as conditions of the permit are met. This practice results in the permit taking on a value which is included in the price upon any sale of the privately owned improvements. Government attempts to retrieve the property by nonrenewal of annual permits are plagued with controversy and claims for compensation which the permittees believe is due them.

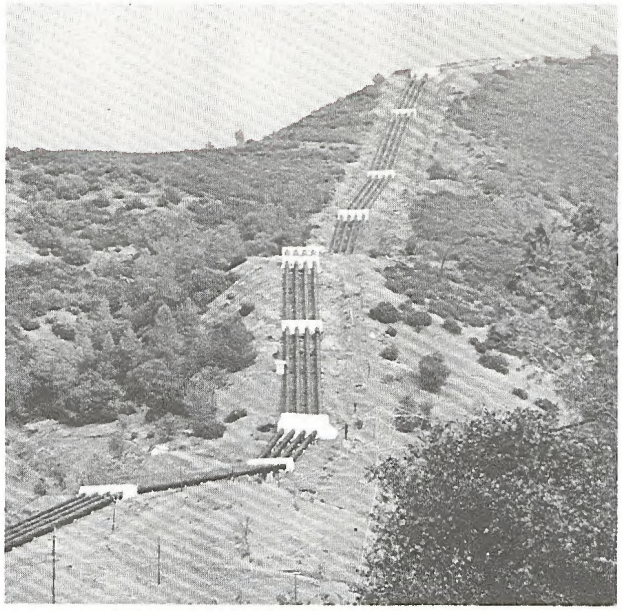
The Commission recommends that legislation be enacted to provide statutory authority for all Federal land managing agencies to issue permits and leases for terms which will assure a reasonable time for amortization of the related investments, and that the Federal agencies should be encouraged to fix terms adequate for each purpose.

The Commission has also found that certain existing acreage authorizations are not adequate to accommodate some occupancy uses on public lands. For example, the 80-acre limitation on occupancies authorized under term permit on national forest land [3] are unrealistic and inadequate to encompass ski slopes and other areas directly related to a single integrated operation. Existing law should be revised to make the agencies' authority more flexible or eliminate the acreage limitations altogether. However, Congress may wish to provide that where a proposed project exceeds a specified dollar or acreage amount, or the proposed term exceeds a specified length of time, it should be referred to Congress for approval. This would permit Congress to consider each phase of a particularly large project, such as the Mineral King project in Sequoia National Forest, in order to protect environmental values.

Where a permit, lease, or other interest is terminated for the Government's convenience before the expiration date, compensation should be provided. This issue is illustrated by the controversy over whether compensation should be paid when vacation home permits are terminated.

Consideration must be given to the distinction between "term" and "annual" permits.

We consider that a term permit is in effect a lease, in that it is a right to use land for a stated period



of time, after which the property is fully recovered by the lessor. Consequently, the permittee should amortize the cost of his improvements over the period of his term permit.

The Forest Service has followed a policy of compensating for the termination of recreation residence term permits at the full appraised value. With respect to the nonrenewal of annual permits, however, the Forest Service, which issues virtually all such permits, cannot under existing law compensate for improvements. Permittees have been offered term permits which would qualify them for compensation if they were terminated. Many persons have accepted, but many also have refused, believing that the annual permit which has been renewed from year to year gives them a more permanent tenure than would a term permit.

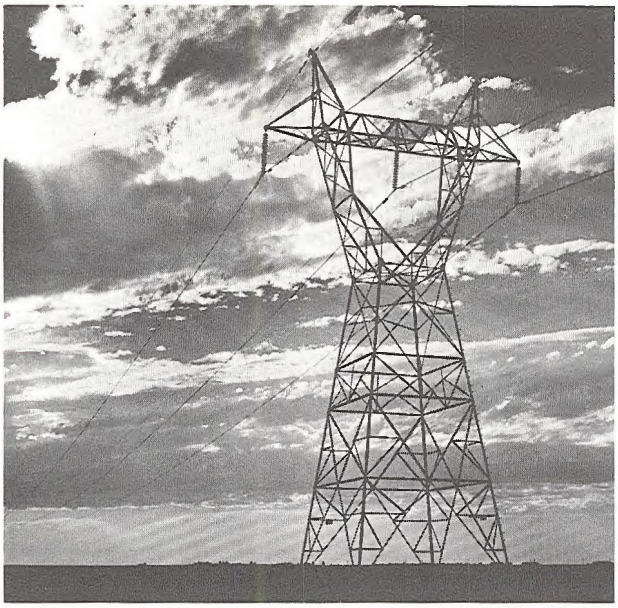
The Commission believes that it is equitable to provide compensation when a term permit is terminated before its expiration date for the convenience of the Government. However, because it would be unfair to the national public, as taxpayers, we do not favor compensation at full appraised value. Rather, we think such compensation should be adjusted in proportion to the time remaining in the permit period.

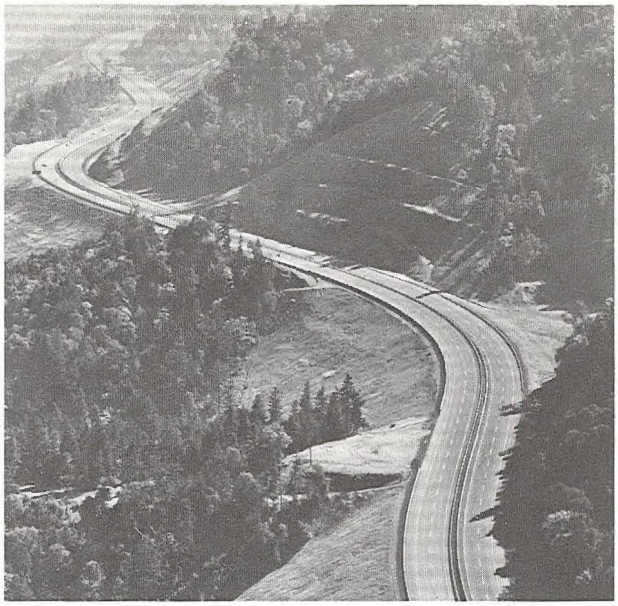
Occupants using public lands under permit or lease, and who are dependent on such lands, should be given preference to purchase the land if it is offered for sale. The Townsite Laws and the Small Tract Act give varying kinds of preference purchase rights to current occupants.[4]

The nature of the occupancy use made of the land varies greatly in the level of investment, the length of time the land is needed by the user, and the im-

[3] 16 U.S.C. § 497 (1964).

[4] 43 U.S.C. §§ 711–731, 682a–682e (1964).





Classification of public lands for rights-of-way corridors would reduce the area taken out of other productive uses and result in better management for environmental values.

portance of the land as an integral part of the permittee's operating unit. It appears reasonable to give preference to the lessee or permittee if his use has required a substantial investment which must be amortized over a long period of time. Such investment might be either on the Federal land or in an operation of which the Federal land is an integral part and essential to its economic viability.

The sale of a tract to a third party, while it is still authorized for an occupancy use, could substantially disrupt a valuable land use such as a powerline, pipeline, or telecommunications facility. Without a preference, a lessee or permittee may be forced to pay an exhorbitant price in order to avoid the uncertainties of tenure beyond the current lease period.

Vacation Homesites

Recommendation 95: Public lands should not hereafter be made available under lease or permit for private residential and vacation purposes, and such existing uses should be phased out.

The Commission recognizes a large demand for vacation homesites throughout the Nation. A special survey of second homes conducted by the Bureau of the Census estimates that there are about 1,550,000 second homes in the United States. Since some of the second homes are jointly owned, an estimated 1,700,000 households out of the 59 million in the entire United States have a direct interest in a second home. Available data show that the number of vacation and seasonal homes almost doubled nationally between 1950 and 1960. The demand is expected to increase.

The nearly 20,000 vacation homes on Federal lands currently account for about 1.2 percent of the total. In view of the location of the public lands in relation to population centers, it is apparent that Federal lands could never fulfill the major share of the national demand for vacation homes.

The principal statutory authority used by the Department of the Interior to lease public lands for residential or recreational purposes in nonurban areas has been the Small Tract Act.[5] It has been that Department's policy, however, to dispose of lands which are found best suited for residential use, rather than to retain and lease them.

Under the Act of March 4, 1915,[6] the Secretary of Agriculture is authorized to permit the use and occupancy of suitable land within the national forests for periods not exceeding 30 years for the purpose of constructing or maintaining summer homes.

The National Park Service has been authorized to permit use and occupancy of national park lands, but may not permit seasonal homes unless designated for such purposes prior to 1964.[7] Although villages and subdivisions are permitted in some national parks, in general, residences are allowed by permit only where they are required to house persons

[5] 43 U.S.C. §§ 682a–682e (1964).

[6] n. 2 *supra*.

[7] National Park Service Administrative Policies for Recreation Areas § 1 (1968).

engaged in onsite public services or in the protection of national park property.

Virtually all of the vacation home use on the public lands is on the national forests. In 1967, there were 19,155 permits in effect in the national forests, while the National Park Service had only 169.

It has been found in general that locations which are suitable and desirable for vacation homes are also likely to be suitable and desirable for present or future public recreation sites. As the demand for public recreation sites has increased, the Federal agencies have sought to cancel permits, or allow permits to expire where the land was needed for public use. The Forest Service terminated 233 permits from 1952 to 1967.[8]

In some instances, tracts on national forests occupied by vacation homes have been disposed of by exchange under authority of the General Exchange Act of 1922,[9] where the use and character of the area has changed, through development, into a permanent type of community which affords the necessary services for yearlong occupancy.

The Commission finds that a relatively small portion of the total demand for vacation homes has been served, or can be expected to be served, on public lands without serious conflict with public recreation use on public lands. Moreover, all members of the public do not have an equal opportunity to acquire a vacation home. Since current and proposed policies do not contemplate opening new areas for these uses, permits generally may be acquired only by one who is willing and able to pay to the existing permittee a premium price for the existing improvements.

In view of the rapidly accelerating demand for public outdoor recreation, and the limited land suitable for intensive development, the Commission believes that public uses should not be preempted for vacation homesites by the few who could be accommodated. *We recommend that there should be no additional tracts opened for vacation home use under permit or lease, and that as sites presently used under permit are needed for public recreation purposes the permits should be terminated.*

While the Commission recognizes that vacation home use under *annual* permits could be rapidly phased out by refusing to renew the permits without compensation, it believes this approach would be harsh. To provide for an orderly phase-out of vacation home use now under annual permit, it would appear reasonable, where immediate use of the site by the Government is not needed, that annual permits be converted to term permits. This should be accomplished within a three-year period.

Where the sites under annual permits are needed immediately for public use within the three-year priod, permittees whose permits are not renewed should be treated the same as those who were afforded the privilege of converting to term permits. At the expiration of the transitional period, permittees still holding annual permits by their own choice would not be entitled to compensation for failure to renew them.

It is not intended to interfere with proper disposals under existing or proposed law. Indeed, *it is our view that sites, currently under permit, for vacation homes, which are not needed for public recreation use and are not incompatible with the planned use of the general area within which they are situated, should be disposed of, provided approval is given by the local government which would be obligated to provide necessary public services.*

Reciprocity

Recommendation 96: Land management agencies should have authority to require a reciprocal right-of-way on equitable terms as a condition of a grant of a right-of-way across public land.

There are large areas of public land intermingled with private land over which access is needed to reach the public land. Without public access to public lands, intervening private owners can turn public values into private gain. For example, if private landowners are able to bar access to public timber lands, the competition for any saleable timber which must come over their land is reduced, leaving them in a position to purchase the timber at a lower price than otherwise possible. Control over access has also enabled some favorably situated owners in the guide business to have the advantages of exclusive use.

The right to require reciprocity was the subject of heated controversy in the early 1960's in relation to national forest access. This culminated in an opinion by the Attorney General in 1962, which held that the Secretary of Agriculture has the discretionary authority to require that the applicant for a road right-of-way across national forest lands grant a similar right to the United States to cross his property.[10]

The Commission believes the requirement that an applicant agree to the grant of a right-of-way across his lands, as a condition for a right-of-way across public land, is appropriate if it is reasonable and closely related to the proper management of public lands. *We recommend that Congress extend such*

[8] Daniel, Mann, Johnson & Mendenhall, n. 2 *supra*. at Ch. XIII.

[9] 16 U.S.C. § 485 (1964).

[10] 42 Op. Atty. Gen. 1 (Feb. 1, 1962).

More than 19,000 vacation home permits on National Forest and National Park lands are in effect. These lands may be valuable for public outdoor recreation or other types of land use in the future.

authority to all Federal land managing agencies for all types of rights-of-way.

Urban Expansion and New Cities

Recommendation 97: A new statutory framework should be enacted to make public lands available for the expansion of existing communities and for the development of new cities and towns.

The Nation's population is expected to increase by nearly 100 million persons by the year 2000. By far the largest part of the increase will occur in the urban areas.[11]

With the prospect of this rapid growth of our population, the Commission has considered the role the public lands might play in meeting the increasing demands for land for urban uses over the next several decades. These demands are likely to be satisfied both by the expansion of existing communities and the creation of wholly new towns and cities.[12]

The primary authorizations under which land has site Laws [13] which provide for withdrawal, location, use and disposal of public lands for townsites. However, most of these are older laws that have become obsolete, as evidenced by the fact that under them less than 600 acres were disposed of during the 1958–1967 period.

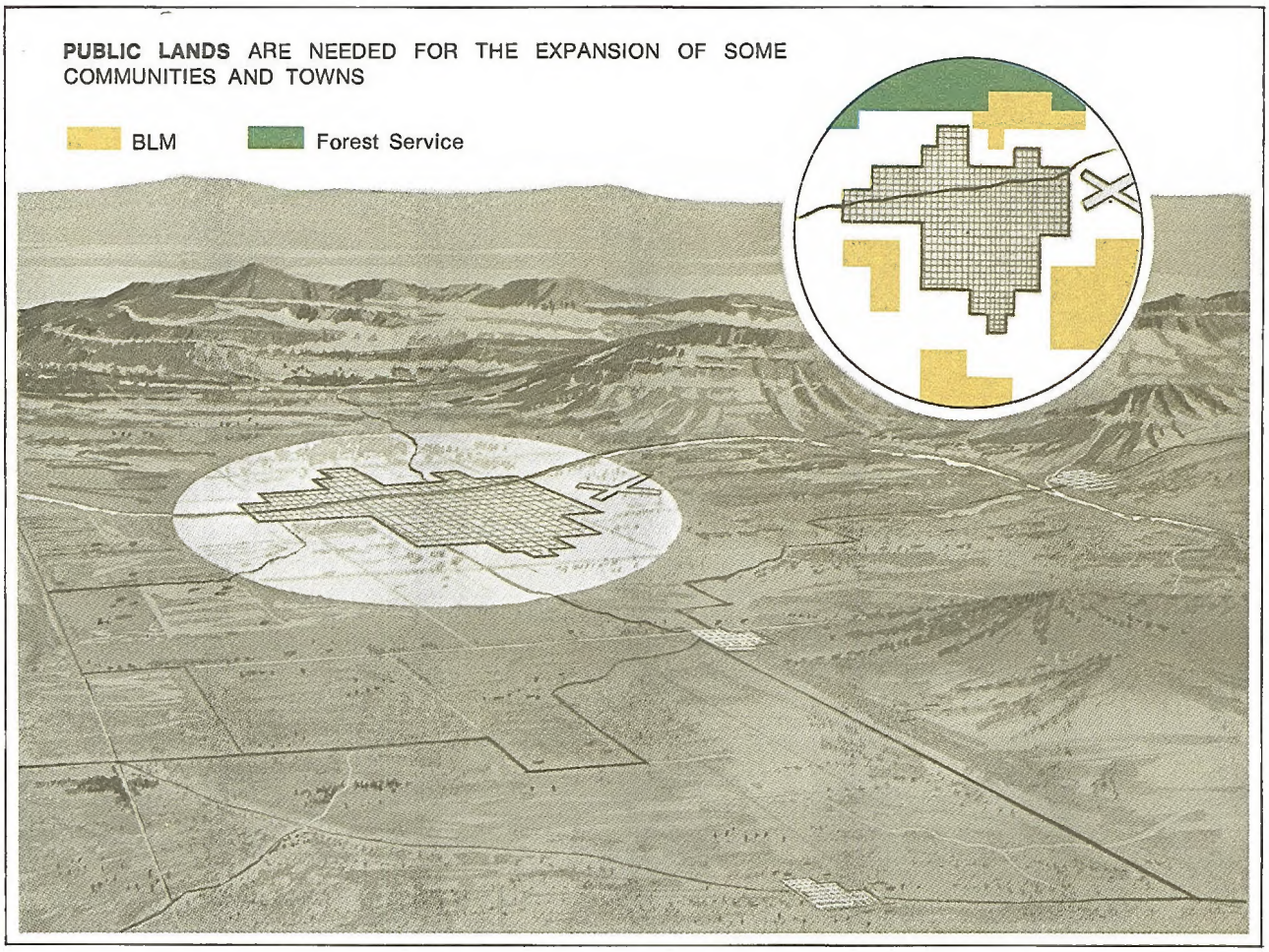
Congress has enacted two more recent laws which make land available for community expansion. National forest land is available for townsites under the Act of July 31, 1958,[14] to countries, cities, or other local government subdivisions upon satisfactory

[11] Robert R. Nathan Associates, *Projections of the Consumption of Commodities Producible on the Public Lands of the United States 1980–2000,* Ch. II. PLLRC Study Report, 1970.

[12] An analysis, made from several viewpoints, of the possible future role of public lands in the establishment of new cities is contained in Daniel W. Cook and Urban America, Inc., *Probable Future Demands on the Public Lands for New Cities and Urban Expansion.* PLLRC Study Report, 1970.

[13] 43 U.S.C. §§ 711–731 (1964).

[14] 16 U.S.C. § 78a (1964).



showing of need. Lots are sold to the highest bidder. To date, the law has never been used.[15]

The temporary Public Land Sale Act of 1964,[15] which will expire on December 31, 1970, authorizes the Secretary of the Interior to sell public lands that have been classified for disposal after a determination that (a) the lands are required for the orderly growth and development of a community, or (b) the lands are chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for grazing, and raising forage crops), industrial, or public uses or development. Sales may be in tracts not greater than 5,120 acres each to state or local government agencies at (1) the appraised fair market value, or (2) negotiated market value. During its 5-year existence, this law has accounted for the disposal of a few thousand acres, only a small portion of which was for urban expansion.

Other authorities which have been used to a very limited extent for disposal of public land for urban purposes by the Department of the Interior are the Small Tract Act and the Recreation and Public Purposes Act.[16] The Department of Agriculture can also make national forest land available for disposal for community purposes through the various laws providing for exchanges of national forest lands.[17]

Establishment of New Cities

Proposals which have been advanced by advocates of a new cities policy contemplate that as many as 100 cities of 100,000 population each and 10 cities of about a million population each must be established nationwide during the next 30 years. Each project obviously would be an enormous undertaking. At present, there is no national policy for such a new cities program, but the Department of Housing and Urban Development has the matter under study, as do committees of Congress.

It is recognized that the major aspects of such a program (including long-term capital, tax credits, insurance of loans, provisions for schools, parks, freeways, and other public facilities, etc.) will not involve public land policy. Nevertheless, one of the critical problems in the development of new cities is that of the initial assembly of a large block of land. In this respect, public land might play an important role, for such blocks can be more readily assembled on public than on private lands.

Congress, therefore, should as the first step make some public land available for a prototype "new city" on an experimental basis to provide information on policy aspects of using public lands for new cities in the future.

However, before making any public lands available for a new city, there must be an evaluation of the need for the development. We have confidence that the public land management agencies can and will properly classify land as being suitable for urban use. This alone would not demonstrate that there is a requirement in that area. *It is recommended that the land management agency obtain evaluations as to the need for public land to be used for a new city from the Department of Housing and Urban Development as the Federal unit charged with the general responsibility for urban programs, from an appropriate state planning agency, and from a recognized land planner from outside government.* The evaluations should accompany the recommendation on the proposed project when transmitted from the executive branch to the Congress.

The following points should also be considered by the Congress in making public lands available for new cities: (a) the classes of lands, e.g., parks, wilderness areas, etc., that will not be made available; (b) maximum size of units to be made available; (c) whether or not land will be made available at a low or nominal price; (d) whether payment to the Federal Government should be deferred; (e) whether each unit will have a time schedule for completion; (f) whether restrictions should be placed on use of the land; (g) who would be eligible as grantees (e.g., private developers, state governments, local governments, federally chartered development corporations); (h) whether state approval should be a requirement; and (i) provision for staged development of the project to assure balanced growth and minimize risks, particularly as to possible adverse impact on the environment, associated with such a novel program thereby permitting reevaluation before each successive stage is approved.

Even after the prototype project has been initiated, because the concept of building entirely new large viable cities is so complex and costly, Congress should, until more experience is gained with them, approve them on a case-by-case basis, in very much the same manner as authorizations for power or reclamation projects.

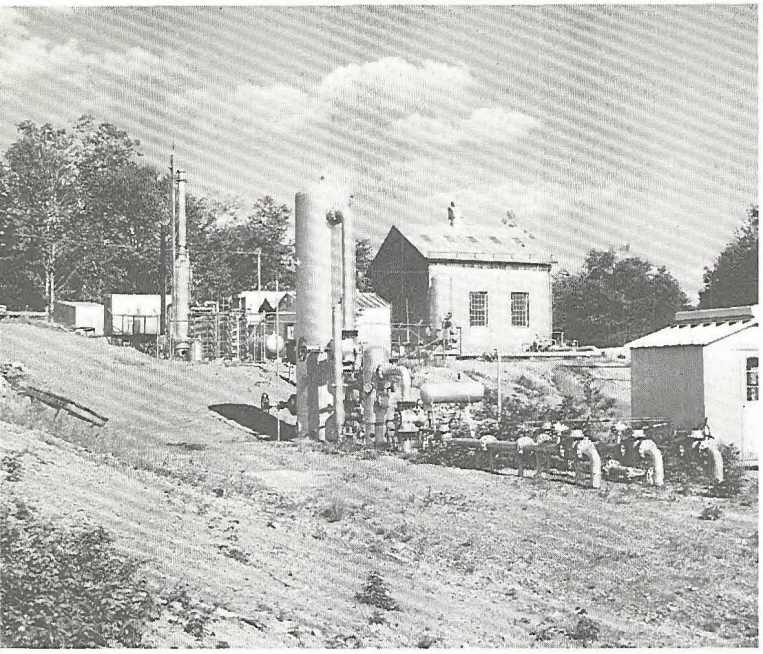
Expansion of Existing Communities

The Commission believes the present laws providing for disposal of public land for expansion of existing communities are inadequate. They were enacted at a time when the methods of development and the needs of the Nation were quite different from what they are today. The numerous laws which have grown up, the variety of restrictions as to qualifications of purchaser and type of use, the acreage

[15] 43 U.S.C. §§ 1421–1427 (1964), as amended, (Supp. IV, 1969).

[16] 43 U.S.C. §§ 682a–682e, 869–869–3 (1964).

[17] E.g., 16 U.S.C. §§ 485, 516 (1964).



Special use permits are necessary when public lands offer the only suitable location for certain structures. At left is a gas compressor station. The tower at right is a microwave relay station.

limitations and limitations on the number of tracts, combine to make it difficult to dispose of public lands to meet urban development needs. In addition, the practice of disposal of national forest land by exchange has made disposal of these lands for urban uses cumbersome and the target of criticism.

Although the Public Land Sale Act of 1964 [18] is an improvement over previous laws, it is only temporary legislation and is also inadequate in several other respects, one of which is that it is not applicable to the national forests.

With respect to national forest land that has been needed for expansion of existing communities has been provided almost entirely through exchange under authority of the General Exchange Act of 1922.[19] Some 32,000 acres were exchanged in the 1958–67 period for urban purposes. This procedure first requires the exchange proponent to acquire other land that is wanted by the Forest Service and is of equal or greater value than the federally owned land for which it is to be exchanged. Often the tract or tracts of land wanted by the Forest Service must be purchased by the proponent at considerable cost and effort.

The Commission recommends that legislation be enacted providing authority for direct sale of national forest land for urban use other than as townsites and that it be the preferred method of transferring land for this purpose. The Forest Service should always have discretion to withhold from sale lands that must be kept in Federal ownership in order to protect other values. Consideration should be given to proposals that the Forest Service be allowed to use sale proceeds to acquire suitable replacement land. Experience has established that the acreages required for urban expansion are relatively small but vital to the typical community in public land areas.

State and local governments should have a flexible method available under which they can acquire and resell land for urban expansion. *To make this possible, Congress should authorize Federal agencies to sell public land classified for urban uses to qualified local governmental agencies under a definite term contract of sale permitting payment to the Federal Government to be delayed until the lands have been transferred to private ownership.* Such a contract of sale could be limited to a definite period, after which the state or local government could be given the option of paying the agreed upon price or returning the land to the Federal Government. However, no such contract should be authorized unless there is an adequate development plan in existence. As in the case of proposed new cities, the land management agencies should obtain advice from Federal, State, and private sources as to the need for the land.

We believe such a measure would facilitate planning and more orderly urban growth, get public lands needed for development onto the tax rolls more quickly, return a fair value to the U.S. Treasury, and reduce the administrative cost of disposal to the Federal Government.

[18] n. 15, supra.
[19] 16 U.S.C. § 485 (1964).

Objectives Unrelated to Public Land Values

Recommendation 98: Whenever the Federal Government utilizes its position as landowner to accomplish, indirectly, public policy objectives unrelated to protection or development of the public lands, the purpose to be achieved and the authority therefor should be provided expressly by statute.

One of the most controversial executive actions involving the imposition of conditions on the granting of public land privileges reaching beyond public land uses and values was the issuance of regulations in 1963 by the Secretaries of Interior and Agriculture providing governing rights-of-way for electric facilities across public lands administered by those agencies.[20]

Under these regulations, grants of rights-of-way for a facility to generate electricity, or to transmit or distribute electric power of 33 or more kilovolts, are authorized only if the Secretary of the Interior or Agriculture determines that the proposed structure will not conflict with the "power-marketing program of the United States," or where plans for it can be modified to eliminate such conflict. The Secretaries also reserve the right to determine, or to invoke arbitration to determine, whether the applicant's transmission or other facilities have "surplus capacity" (*i.e.*, transmission capacity in excess of that needed by the grantee for his operations). The regulations provide that the Government may use such surplus capacity or increase the capacity of the facility at its expense to create surplus capacity to transmit federally generated electric power to statutory preference customers, other than those receiving service from the grantee on the date he applied for the grant.

These regulations are not based on any specific statutory language other than the general authority for granting easements and rights-of-way across public lands for the transmission of electrical energy found in the acts of February 15, 1901, and March 4, 1911.[21]

There is no provision for reciprocal wheeling by the Federal Government, and application of these regulations may be waived by the Department of the Interior where they are superseded by a specific contract between the utility and the power marketing agency.

Another example of the use of public land law authority to achieve unrelated program objectives occurred in 1967. The Secretary of the Interior was able to block the proposed construction of a high-voltage powerline near the Antietam battlefield because the Potomac Edison Company required his permission for the line to cross the Chesapeake and Ohio Canal National Monument, some distance from the battlefield. He would have been unable to act except for the accident that the line would be required to cross Federal property. In this case the objective was not merely to remove the powerline from an area near the battlefield, but to eliminate the line, at substantial additional cost to the company, from the envisioned Potomac River National Landscape, which has not been approved by Congress. The Secretary's action did give the State of Maryland time to amend its law and provide for adequate consideration of esthetic values in such situations.

We take no position on the merits of the objectives in each of these actions. However, we are concerned that they were undertaken without clear guidelines or direction from Congress. *Every constitutional tool available to the Federal Government should be used to accomplish public policy goals, but the decision to utilize indirect approaches to promote such objectives should be made by Congress.* Authority to impose conditions unrelated to public land values should be expressly provided by statute where appropriate. This would remove present uncertainty and controversy and promote sound planning and development. In our chapter on Public Land Policy and the Environment we point out how useful and necessary this tool is.

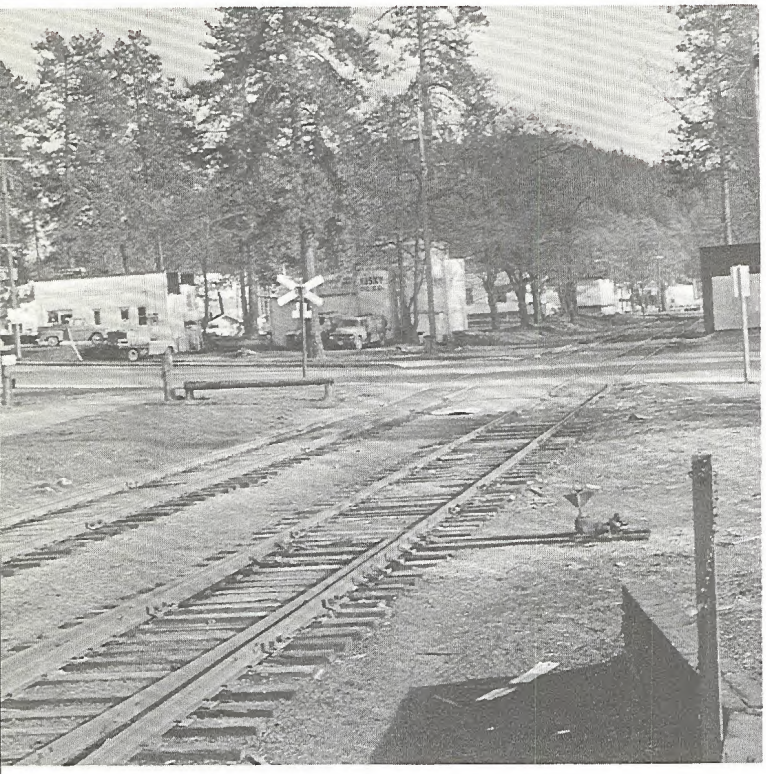
Administration

Recommendation 99: While control and administration of occupancy uses should remain with the agencies managing the lands, assistance should be obtained from agencies having technical competence in connection with specific programs.

The Commission considered placing the control over the granting of a broad class of public land occupancy uses in a single agency or in a number of agencies that have expertise in those particular uses. Such uses would include rights-of-way for transmission lines, pipelines, highways, sites for radio and television transmission facilities, airports, and perhaps urban or community uses, but would not necessarily include such privileges as individual vacation homes, ski slopes or other recreation sites, and individual industrial or commercial sites that are not located in urban communities.

The Commission rejected the idea because it believed that many of the occupancy uses are closely related to, or have considerable impact on, other resource uses which must be carefully considered in the decisions of the responsible land management

[20] See 43 C.F.R. 2234.4–1(c)(5) (1969).
[21] 43 U.S.C. §§ 959, 961 (1964).



In many instances, railroad rights-of-way have been used for non-railroad purposes, giving rise to questions of land title. This photo was taken at Coeur D'Alene, Idaho.

agency. It is inadvisable to divide control between two agencies and separate the decisionmaking for some of the occupancy uses from those who are concerned with other resource values. More importantly, it is essential to provide the land management agencies with authority to control certain kinds of heavy impact occupancy uses that now may be initiated and related construction may take place without prior agency approval or meaningful regulation of their environmental impacts, such as highways over the unreserved public lands.[22]

However, since the specialized knowledge and expertise necessary for wise decisions concerning the best design and layout of many occupancy uses is often most highly developed in certain other agencies, *e.g.,* the Bureau of Public Roads, the Commission believes that their assistance should be obtained by the land management agencies that do not have the expertise within their own organizations.

Railroad Rights-Of-Way

Recommendation 100: The Secretary of the Interior should be authorized to approve other uses of railroad rights-of-way with the consent of the affected railroad, and persons holding defective titles from railroads to right-of-way lands should be confirmed in their uses by the Federal Government and the affected railroads.

Prior to 1875 special legislation provided right-of-way grants to each railroad. These grants varied in width and in other respects as well. Along with the right-of-way, Congress made other land grants to assist the railroad in defraying its costs of construction.

Special grants of rights-of-way came to a close with the passage of the General Railroad Right-of-Way Act in 1875,[23] which effected a sharp change in congressional policy. This Act made no land grants, but granted a right-of-way for 100 feet on each side of the center line of the road. It also granted the right to take from the bordering public lands buildings materials necessary for the contemplated construction, as well as adjacent rights-of-way for station buildings, depots, etc., not to exceed 20 acres for each station, to the extent of one station for each 10 miles of road.

It is now well established that: (1) the railroads have a right in perpetuity to the exclusive use and possession for railroad purposes of the surface of the lands granted for easement and right-of-way purposes; (2) such grants were made on the implied condition of reverter in the event the railroad companies cease to use or retain the land for the purpose granted; and (3) minerals in right-of-way lands belong to the United States. The only conveyance under existing law which the railroads can make without authority of Congress is to states, countries, and municipalities for highway and street purposes.

Over the years railroad rights-of-way have been occupied and used with and without the permission of the railroads for a great variety of uses and purposes. These include agricultural uses where farmers and ranchers moved their activities up to the railroads' fences which were often placed near the railroad tracks and not on the boundary line of the right-of-way; commercial activities pursuant to leases with the railroads for grain elevators, feed, fuel and building supply dealers, warehouses, and other commercial enterprises which regularly receive and ship commodities by rail; and such nonrailroad purposes as municipal buildings and motels. There are also numerous pipelines and wirelines, private roads, irrigating ditches, and the like crossing or even longitudinally located along such rights-of-way by utilities.

The railroads, in order to protect their perpetual right to use the right-of-way for railroad purposes, have often issued leases, licenses, and permits for in-

[22] 43 U.S.C. § 932 (1964).

[23] 43 U.S.C. §§ 934–939 (1964).

To meet residential demands of a growing population, the use of public lands for new cities should be provided for by statute.

definite periods, which may be terminated on 30 days' notice by either party. Generally they provide for the removal of the improvements by or at the cost of the lessee, licensee, or the permittee. The leases for all practical purposes continue in effect indefinitely. In the event a railroad were challenged as to the propriety of any uses made pursuant to a lease, license, or permit, the railroad would rely upon its clause and immediately clear the land in order to make the questioned use moot.

Since it appears that there may be considerable use of railroad rights-of-way for nonrailroad purposes, and there are many acres of land on such rights-of-

way that could be used for a variety of purposes, their use should be authorized by a statutory directive to that effect. Obviously, it is economically wasteful for usable lands to lie idle when they might be put to productive use, and it is not expedient to permit the present confusion as to the limits of the rights of the railroads and the United States to continue.

However, there should be a provision requiring that railroad rights-of-way never be diminished to the extent that adequate public service cannot be maintained. Available evidence indicates that a width of 50 feet on each side of the centerline is ordinarily adequate, and such a minimum width probably should be prescribed.

There are innumerable situations in which railroads have purported to pass title to right-of-way occupants. Since these lands are not needed for railroad purposes, it appears just and reasonable to provide a procedure for confirmation of their titles, with the consent of the railroads and of the United States. Inasmuch as the railroads never owned an interest in the minerals, the confirmed titles should carry an express reservation of mineral interests to the United States.

Generally, those seeking confirmation of their titles should be required to pay no more than the administrative expenses of the Federal Government and the railroads. The reverter interest of the United States is ordinarily valueless because, in a 1922 Act,[27] Congress provided that forfeiture interests in railroad rights-of-way would pass either to the owners of adjacent lands or to municipalities under certain circumstances. However, in the unlikely event that the Federal interest may prove to be valuable in some situations, the Secretary of the Interior should take appropriate steps in those cases to charge the fair-market value of the interest to be conveyed.

[24] 43 U.S.C. § 912 (1964).

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Tax Immunity

BECAUSE OF THE SOVEREIGNTY of the United States, federally owned lands cannot be taxed by state or local governments. This has created large and increasing problems for the states within whose borders such lands lie. The problems are particularly felt in the West where most public lands [1] are concentrated and where, as previously shown in this report, federally owned lands often constitute a large proportion of a state's total area. But the situation, concerning which the Commission is required to make recommendations, is not confined to the West. Eleven nonwestern states each contain more than 1 million acres of Federal land, ranging from approximately 8 percent of the total area of Arkansas to 3.2 percent of Georgia. In addition, West Virginia contains 920,212 acres of public lands (5.9 percent of the state's total acreage); South Carolina 680,265 acres (3.5 percent); New Hampshire 678,807 acres (11.8 percent); and Vermont 240,238 acres (4.0 percent) (in each state there are also other Federally owned lands).

Originally, the Federal ownership of land was considered, in general, to be temporary. Under Federal policy and laws the pubilc domain passed into private ownership and thereupon became subject to state and local taxation. The retention by the Federal Government of comparatively small amounts of land for military or other Federal purposes seemed to pose no serious problem for the future, and even in 1872, when a large tract in Wyoming was set aside to establish Yellowstone National Park, it was still generally assumed that almost all of the rest of the Nation's public domain would eventually be transferred to private ownership.

In 1891, however, with passage of the act that authorized the President to set aside forest reservations, a major break with the past occurred. As large tracts of forest land were set aside as reserves, it became obvious that millions of acres of the public domain would be retained and managed permanently by the United States and would never pass into private ownership.[2]

The impact on the taxability of state and local governments by the Federal Government's retention of the forest lands caused concern at an early date, and in 1907 Congress authorized the return of 25 percent of stumpage sale receipts to the counties in which the timber was cut to be used for public education and roads.[3]

In 1920, the Federal Government acted similarly when the Mineral Leasing Act [4] of that year removed from the operation of the Mining Law certain minerals, including oil and gas deposits, and thus assured that lands chiefly valuable for those minerals would remain in Federal ownership. As part of the Mineral Leasing Act, Congress authorized sharing with the states the receipts generated by the oil and gas leases, giving the state of origin 37½ percent of the revenue, the Reclamation Fund 52½ percent, and permitting the United States to keep only 10 percent for its cost of administration. The only exception is that Alaska receives 90 percent of oil and gas lease revenues in accordance with the provisions of the Mineral Leasing Act.[5] Several other, but relatively minor revenue-sharing programs were also developed, both before and after the two mentioned above, but payments made by the Federal Government to the states for such programs have been comparatively small.[6]

[1] As used here the term "public lands" refers only to those lands coming within the definition of that term in section 10 of the Commission's Organic Act, as quoted in the Introduction and printed in full in Appendix A.

[2] The 1891 Act, as amended, is 16 U.S.C. § 471 (1964). Today the total of lands administered by the Forest Service has grown to over 186.9 million acres in 44 states. Of the total, 160.8 million acres came from public domain lands, and the rest was acquired from non-Federal sources. For a breakdown of acreage by states, see Appendix F.

[3] 16 U.S.C. § 500 (1964).

[4] 30 U.S.C. § 181 et seq. (1964).

[5] 30 U.S.C. § 191 (1964).

[6] A breakdown of all programs and payments is contained in EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes,* Pt. 2. PLLRC Study Report, 1968.

The legislative history of the acts providing for the sharing of receipts from forest products and oil and gas, as well as other leasable minerals, clearly reflects that the payments to the states and local governments were intended as compensation for the fact that the lands in question would no longer be available for private ownership and property taxation.

Today, however, the pressure of new circumstances requires new thinking. Until comparatively recently, the cost of providing state and municipal services, especially in the western public land states whose vast spaces had a sparse population and received relatively few outside visitors, was not very great. But in recent years, a dramatic change has resulted from the greatly increased mobility of the American people. Visitors who now come in increasing numbers to public land areas from all over the country require, as a minimum, the same services that are furnished to local citizens—and sometimes they require more.

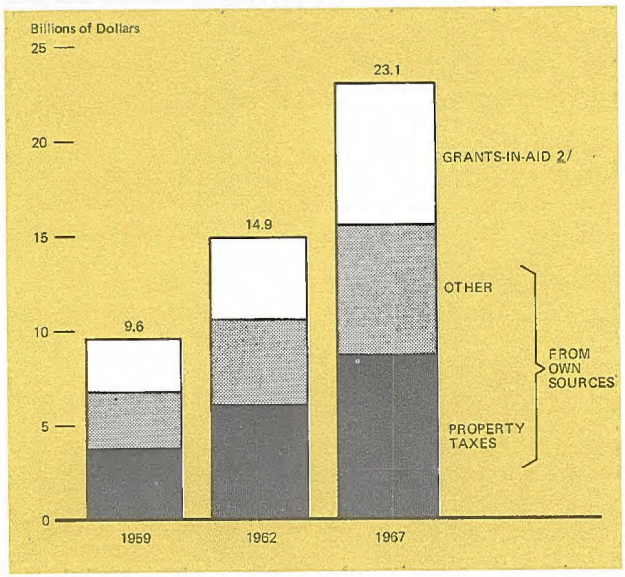
At the same time, state and local government expenditure levels and revenue requirements have vastly increased. In 1940, prior to World War II, the combined spending of state and local governments was approximately $9.3 billion. Ten years later, in 1950, it had risen to approximately $22.8 billion. In 1969, the figure exceeded $100 billion.

In the meantime, while state and local revenue needs have been growing, the recent years have seen a greatly expanded increase in the acreage of lands permanently set aside by the United States for various purposes. From relatively modest beginning, for example, there are now 18,564,079 acres of public domain under the jurisdiction of the National Park Service, with an additional 4,735,818 acres acquired for the National Park System, or a total of 23,299,897 acres spread among 44 states [7] and over 26 million acres set aside for the Wildlife Refuge System in all 50 states.

The largest portion of the public domain, more than 465 million acres, including 295 million acres in Alaska, is under the jurisdiction of the Bureau of Land Management of the Department of the Interior. Except for those lands that may be transferred to the states to satisfy land grants, this large acreage comprises, for the most part, what is known as the vacant unappropriated public domain, and was previously assumed to be destined for private ownership. But since the passage of the Taylor Act in 1934,[8] the transfer of these public domain lands to private ownership has slowed considerably. In the last decade, it has dwindled to a trickle while awaiting the enactment of legislation suited to the needs of today and tomorrow.

If the recommendations of this Commission are followed, additional millions of acres of public domain land will be retained by the Federal Government instead of being transferred, as contemplated until relatively recent times, to private ownership. With the millions of acres of land already reserved, plus the additional acres that probably will be set aside, the United States must re-examine its relationship to the state and local governments within whose borders those lands are located.

TOTAL LOCAL GOVERNMENT REVENUE, BY SOURCE, FOR SELECTED STATES. 1/



1/ THE 11 WESTERN STATES PLUS FLORIDA, MICHIGAN, MINNESOTA, NEW HAMPSHIRE, NORTH CAROLINA, SOUTH DAKOTA, VIRGINIA, WEST VIRGINIA.

2/ INTERGOVERNMENT REVENUE FROM STATE GOVERNMENT AND FEDERAL GOVERNMENT.

SOURCE: CENSUS OF GOVERNMENTS, DEPT. OF COMMERCE, BUREAU OF THE CENSUS.

Local government depends heavily on property taxes for revenue it raises from its own sources.

Payments to Compensate for Tax Immunity

Recommendation 101: If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.

Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands.

The study made for this Commission confirms the contention of state and county government officials that shared revenues amount to much less than the

[7] For breakdown by states, see Commission staff, *Inventory Information on Public Lands*. PLLRC Study Report, 1970.

[8] 43 U.S.C. § 315 et seq. (1964).

revenues they would collect if the lands were in private ownership and subject to taxation.[9] While the bulk of the states analyzed were in the West, detailed studies of counties in other parts of the country demonstrated that the situation is similar everywhere.[10]

The fact that the lands on the tax rolls would have brought in a greater revenue should not by itself be considered persuasive. It is, however, a compelling indicator of both the magnitude of an existing problem and the impact of the present system.

This Commission is convinced that the United States must make some payments to compensate state and local governments which have burdens imposed on them because of Federal ownership of public lands within their borders. Even though it is recognized that Federal expenditures must be held to the minimum necessary to provide essential Federal programs, the Federal Government, as a landowner, must pay its way. Whatever the costs, fairness and equity demand that such payments be made.

Manner of Making Payments

Recommendation 102: Payments in lieu of taxes should be made to state governments, but such payments should not attempt to provide full equivalency with payments that would be received if the property was in private ownership. A public benefits discount of at least 10 percent but not more than 40 percent should be applied to payments made by the Government in order to give recognition to the intangible benefits that some public lands provide, while, at the same time, recognizing the continuing burdens imposed on state and local governments through the increased use of public lands. The payments to states should be conditioned on distribution to those local units of government where the Federal lands are located, subject to criteria and formulae established by the states. Extraordinary benefits and burdens should be treated separately and payments made accordingly.

A system of payments in lieu of taxes provides a better standard for determining the level of payments than does a system of sharing revenue. Just as in their relationship to private property, state and local governments are, in general, constitutionally responsible for providing the ordinary functions of government to the public land areas within their borders. Federal ownership, in other words, does not mean that the Federal Government has assumed fiscal responsibility for the administration of all aspects of those lands. But, the system of revenue sharing bears no relationship to the direct or indirect burdens placed on state and local governments by the Federal lands within their boundaries.

In practice, there has been no attempt made to correlate the services rendered, or the burdens assumed, by the local governments to the payments they receive under the present revenue-sharing systems. As a result, the portion of Federal revenues which they currently receive varies from 5 to 90 percent, depending on the program and Federal agency involved.

Although they were originally designed to offset the tax immunity of Federal lands, the existing revenue-sharing programs do not meet a standard of equity and fair treatment either to state and local governments or to the Federal taxpayers. Such a standard should be established and applied.

In addition, the Commission's review has revealed several defects in the revenue-sharing system. In some cases, payments made by Federal programs undercompensate, while in others they overcompensate. The revenue-sharing programs, moreover, do not apply to many federally owned lands, and where they do apply, management decisions often reduce or eliminate the revenue base upon which the payments to state and local governments depend. At the same time, pressures can be generated to institute programs that will produce revenue, though such programs might be in conflict with good conservation-management practices.

The Commission has thus concluded that the existing system of revenue sharing is not equitable, and that the Federal taxpayer is financing a program that has little relation to the purpose it was originally designed to accomplish.

It is axiomatic that expenditure requirements determine the tax levels needed to produce the revenue to meet the costs of government. Since the *ad valorem* tax system has been the foundation for the financing of programs providing municipal services, the Commission believes that all landowners must share in payment for these services. This should not exclude the Federal Government as a landowner, except

[9] EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes,* Pt. 4. PLLRC Study Report, 1970, for a detailed analysis of revenue sharing and payments in lieu of taxes related to public lands in five states and 50 counties.

[10] For example, in Carroll County, New Hampshire, where 24 percent of the land is in national forest, total benefits to the county from both Federal revenue sharing payments and indirect benefits in 1966 amounted to $21,291. The estimated potential tax revenue to the county from the Federal lands, if assessed and taxed on the same basis as privately owned lands of similar character, was estimated at $151,420. In Gogebic County, Michigan, the potential tax revenue was estimated, likewise, at $251,840 from national forest lands, as compared to direct and indirect benefits of $149,581 in 1966.

where the federally owned land is being used for facilities, as in the case of post offices, to furnish services to all the people throughout the country.

Believing, as the Commission does, that the tax level represents the actual need for revenue, Federal payments related to the level of state and local taxes levied on private owners should be in proportion to the services received and burdens imposed by Federal ownership. At the same time, to repeat, they should be fair and equitable to all concerned.

Level of Payments

While the Commission is convinced that payment should be related to actual property taxes in the area, it does not follow that the payments should be equal to full tax equivalency.

Under the existing system, certain benefits are received by local governments. For example, probably because it pays no taxes, the Federal Government permits state and local governments to use its land without charge for such facilities as airports and cemeteries, and allows them to take sand and gravel without cost. In addition, the Federal landowner provides fire protection for its own lands where fire is a major threat, thereby relieving the state and local governments of that cost. There are also indirect benefits, like the use of roads, which Federal agencies construct and maintain.

Though the Commission's studies have proved that these direct and indirect benefits cannot be calculated with any degree of precision, the Commission believes that some reduction in payments should be made for the measurable as well as the immeasurable benefits which accrue to the communities in which there are concentrations of Federal lands.[11]

After careful consideration, the Commission has concluded that fairness will best be served by deducting—as recognition of the direct and indirect benefits received by state and local governments from the use of public lands—not less than 10 percent nor more than 40 percent of the amount necessary to provide full tax equivalency.

At the same time, the Commission has concluded that while benefits are national, the geographic distribution of the Federal lands makes their burdens regional and local, and that, in general, continued Federal ownership of public lands provides no distinguishable benefits to state and local governments in lieu of the benefits they would receive if the lands were privately owned.

[11] EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes,* Pt. 4. PLLRC Study Report, 1970. The great variety of indirect benefits, which include use of Federal facilities and lands for some purposes, availability of Federal employees to provide exeprtise in some cases, and joint use of Federal roads and facilities in some cases, differ widely from one location to another.

Extraordinary Benefits and Burdens

From time to time, certain extraordinary benefits may be obtained, or burdens imposed, as a result of Federal ownership of public lands. The Commission does not believe that they should be taken into consideration in establishing the basic formulae of Federal payments. Whatever their cost may be, they should be negotiated separately, and a separate payment should be arranged.

If a state or local government, for example, was required to give the Federal Government services, such as increased police protection, over and above what it provided to regular taxpayers, it could and should suggest the negotiation of a contract with the Federal Government. If the Federal Government thought the local government was charging too much for such special services, it could seek other arrangements.

The important point is that under a payments-in-lieu-of-taxes system, the Federal Government would expect, and would be entitled to, the same services received by a regular taxpayer from the state and local governments—no more and no less.

Unit of Government to Receive Payment

The governmental unit that supplies the services, usually the county or municipality, should receive the Federal payments in lieu of taxes. But, under our Federal system, the national Government should deal solely with the state government, which should make proper allocations within the state.

In this connection, the Commission recognizes that in many instances, state tax-equalization programs redistribute all categories of funds. While this is a matter of state policy, concerning which the Federal Government should take no position, the Commission's contractor study showed that generally these programs must supplement local tax revenues from general state funds to a greater degree in areas of public land concentrations than elsewhere.

Different Land Categories

The Commission believes that it would be impractical to exclude from the program any types or categories of lands because the impact of different classes of land is uneven. Under existing revenue-sharing systems, no payments are made for national parks, military reservations, and reclamation reservations. Yet, there is no evidence that the economic benefits flowing from the activities carried on at these lands would not be equalled or exceeded if the lands were privately owned and were part of the local tax base.

Limit Payments to Revenues?

The Commission believes it is impractical and improper to limit payments to the net revenues of resource programs. Because these programs involve both commodities for which market value is charged and those, such as outdoor recreation, for which user fees, if any, are unrelated to market value, overall net revenues from public land programs do not provide an adequate guide to the level of payments in lieu of taxes. For the same reasons that the Commission recommends abandoning revenue sharing, it rejects limiting payments in lieu of taxes to the receipts from the sale of goods and services from the public lands.

The "Threshold" Limitation Approach

Federal lands that provide general services, such as use for post offices, are located in all parts of the country. However, public lands are not so regularly distributed. Even in a state containing a relatively small percentage of federally owned land, a large percentage may be concentrated in a single county.

The Commission cannot endorse the "threshold concept" under which payments in lieu of taxes would be made only to the extent that Federal lands represent more than some percentage of total land in a particular state or locality. First, it is virtually impossible to arrive at a logical basis for establishing either a percentage of land or of land values within a given area. Secondly, the pattern of concentration of public lands makes it impractical in our Federal system to apply such criteria to the states: in 19 states, for instance, federally owned lands comprise less than 2 percent of the state, while in 12 they constitute more than 26 percent. And this does not take cognizance of concentrations within individual counties.

Uniform Treatment

We believe that a uniform policy should be applied to both acquired and public domain lands in determining the level and distribution of payments in lieu of taxes.

Although revenue sharing has been used, historically, as a device to compensate for Federal ownership of public domain land, while payments in lieu of taxes were applied to acquired lands, the Commission sees no reason to continue that distinction. Whatever the original rationale for the different approaches, it believes that there is no longer need or purpose to continue the dual treatment.

Use of Federal Payments

The Commission is convinced that the Federal Government should not earmark payments in lieu of taxes for particular functions. This is consistent with our concept of the Federal-state relationship.

Historically, virtually all revenue-sharing payments are restricted to use for education and roads, while payments-in-lieu-of-taxes systems contain no restrictions. In view of the present-day, high level of financing for varied functions of state and local governments, earmarking for restricted uses is no longer valid. By paying the states directly without earmarking, the states can adjust the use of the funds to their individual fiscal requirements, and the local governments, which will be the ultimate recipients, can use the funds where they are needed.

Relationship to Grant-in-Aid Programs

Existing Federal grant-in-aid payments to state and local governments are not related to, and do not compensate for, the concentration of Federal lands, nor would proposed block-grants. Under a wide variety of Federal grant-in-aid programs, more than $20 billion is paid each year to state and local governments. These categorical grants (*i.e.*, earmarked for specific purposes), often requiring matching commitments by state and local governments, help finance a wide range of public programs, such as education, welfare, and transportation, conducted by state and local governments. With one exception,[12] these categorical grants-in-aid are not land related. Consequently, a community with a restricted taxable property base can receive payments no greater than those received by an otherwise comparable community with a fully taxable property base.

Thus, even if categorical grants-in-aid, as now constituted, continue to increase at their current rate (from about $6.5 billion in fiscal year 1960 to an estimated level of more than $24 billion in fiscal year 1970), they will not satisfy the test of fairness which the Commission has suggested is required because of the concentration of Federal lands.

In addition to the expanding system of categorical Federal grants, recent proposals have emerged for large-scale, block-grant, revenue-sharing programs to help finance all state and local government programs. One of the principal proposals—to divert a part of Federal personal income taxes to state and local governments—has drawn considerable attention to the potential of unrestricted block-grants.

[12] Programs administered by the Federal Highway Administration do consider Federal lands in the matching funds payment formulae. It is the one major exception to the general rule that categorical grants do not relate to Federal lands.

But, other devices, such as tax credits, have also been proposed. None of them is designed, however, to compensate for the fiscal burdens generated by the presence of Federal lands.

A Tax Effort Criterion

To the extent that state and local tax efforts fall below the national average, the Commission recommends that payments in lieu of taxes should be reduced proportionately.

In addition to the public benefits deduction from estimated full tax equivalency as the basis for Federal payments, a further deduction based on a tax effort criterion should be applied to assure that the cost of state and local government is not shifted disproportionately to the Federal taxpayer.

The Commission recommends the use of a criterion based on per capita state and local taxes from all sources as a percentage of state per capita personal income for each state, compared to the national average of per capita state and local taxes from all sources as a percentage of national per capita personal income.

Possessory Interest Taxation

State and local governments should be encouraged to tax prossessory interests of Federal land users, such as lessees and permittees, and the improvements constructed by them. This will, obviously, have an impact on the overall tax effort.

At present, the contractor report referred to earlier makes clear that there is considerable variation in the treatment of possessory interests among the states. The Commission believes that possessory interest taxation would afford state and local governments a significant opportunity to supplement conventional property tax income. At the same time, the Commission recognizes that with the many taxing devices available to it, an individual state might score well overall, as compared with other states and still not pursue possessory taxation as vigorously as some of the others do.

Sliding-Scale Highway Benefits Programs

If the Commission's recommendation for the establishment of a payments-in-lieu-of-taxes system is adopted, the sliding-scale highway benefits program should be re-evaluated. Under the interstate, primary, and secondary road network programs, public landholdings of the Federal Government, excluding national forests, parks, and monuments, determine the amount of matching funds required of a state as against the Federal funds for those programs. In the Commission's opinion, this is not a public land problem. But, close consideration must be given to the relationship of primary and secondary highway sliding-scale benefits to land-related payments.

The Valuation of Federal Lands

The Commission recommends that the interests of all concerned should be protected by a continuing program of periodic valuation of Federal lands.

In the interest of administrative simplicity and uniformity, the implementation of a Federal payments-in-lieu-of-taxes system will require a systematic approach to the valuation of Federal lands. Federal lands would have to be valued expressly for tax purposes, with built-in protection against discriminatory practices.

As a first requirement, the General Services Administration should be given responsibility for overall administration. At the operational level, representatives of the Federal Government, jointly with state and/or local governments, should agree on a valuation for tax purposes consistent with the assessment of privately owned lands in the area. Safeguards must then be provided to assure that, in relating payments to the tax rates applicable to similar private land, there will be no discrimination against the Federal Government.

A system of placing valuations on Federal lands for this purpose need not be burdensome, either administratively or financially. The appraisers used could be either Government employees or individuals retained under contract, though the Commission prefers the latter. A different method, used in the valuation procedure for the revested Coos Bay-Wagon Road grant lands in Oregon, might also be followed. A Federal representative, a local representative, and a disinterested third party compose a 3-member board that establishes the valuation.

Still another alternative would be to use a board of appeals, rather than a disinterested third party, to reconcile differences between the Federal and local representatives. Since we are committed to the idea that the United States, as the Sovereign, must have the last word, this last solution may offer the most promise. Valuations would be made every 5 to 10 years but would be updated annually by methods to be established by those making the initial valuation.

Improvements

Valuation for determining payments in lieu of taxes should not include improvements on Federal lands. If improvements on Federal lands (summer homes in national forests, concessionaire facilities

in national parks, etc.) have been made by private users, then state and local governments have the authority to levy possessory interest taxes on their owners.

Improvements placed on the land by the Federal Government should not be taken into consideration because, generally speaking, they are provided for the purpose of furnishing services to the region or locality in which they are constructed. Accordingly, the Commission believes that their benefits automatically outweigh any burdens they might impose.

Period of Transition

> Recommendation 103: In a payments-in-lieu-of-taxes system, a transition period should be provided for states and counties to adjust in changing from the existing system.

Under a payments-in-lieu-of-taxes system, state income might be significantly less than under existing revenue-sharing programs. New Mexico and Wyoming, for example, demonstrate the changes that might occur in connection with both the extent of total payments and the distribution of Federal payments. Mineral-leasing shared revenues are currently an important source of income to both state governments, and may total more than the in-lieu payments based on a percentage of tax equivalency.[13] Because the Commission has recommended that in-lieu tax payments flow to the counties in which the lands are located, it must be noted that in Wyoming only 3 percent of the shared revenues are distributed directly to the counties, and in New Mexico, none. Both states, however, make large intergovernmental transfers to school districts for support of public education.

The sudden suspension of revenue-sharing payments, such as those under the Mineral Leasing Act of 1920,[14] might cause hardship on some state and local governments, particularly if there is a substantial reduction in the amount of payment. *In such cases, payments should be phased so as to provide a gradual decrease over a period of years.* These increased transitional Federal costs could be offset, at least in part, by similarly phasing incremental payments upwards over a short period of years to those states that would receive substantially more under the new system than under the old. *In either event, payments should be adjusted to the basic system as soon as is practicable.*

[13] For comparison of payments under the revenue sharing program with an estimate of payments in lieu of taxes, see EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes,* Pt. 5. PLLRC Study Report, 1970.

[14] 30 U.S.C. § 181 et seq. (1964).

Reclamation Fund

The provisions of the Reclamation Law of 1902,[15] as amended, and the Mineral Leasing Act of 1920,[16] providing for certain receipts to be deposited in the Reclamation Fund, were designed to assure construction of large expensive irrigation projects required to permit development of the West. Generally, the Commission is opposed to earmarking of funds. However, we believe that the United States should not take any action that might interfere with the fulfillment of its commitment to the West. Once the commitment has been fulfilled, the earmarking should cease. Accordingly, *we recommend that the earmarking of any portion of receipts to the Reclamation Fund be discontinued when repayments to the Reclamation Fund are sufficient to finance reclamation construction.*

Cost of Program

The contractor's study, referred to above, indicated that it would cost the Federal Government approximately $190 million a year to make payments, based on full tax equivalency, to state and local governments for the lands for which the Commission is required to make recommendations. In 1966, for those same lands, $93 million was paid under existing revenue-sharing programs.

The Commission recognizes an imperfection in the contractor's estimate. The tax equivalency was based on the General Services Administration's periodic *Real Property Report* [17] in which estimates of land values are not made for tax purposes, do not follow a consistent approach in arriving at estimates, in some instances are crude approximations, and, with regard to acquired lands, carry the original acquisition cost even if they were obtained at nominal cost. For example, there is no indication that potential subsurface mineral values were ever considered in agency estimates of public domain lands.

Nevertheless, while the Commission cannot embrace the $190 million estimate as a ceiling, it has no better means of obtaining such estimate at this time. It believes, however, that the total cost is irrelevant if fairness requires the compensating of state and local governments for protecting the national interest in lands considered to warrant retention in Federal ownership. It is a proper cost to be borne by all Federal taxpayers.

[15] 43 U.S.C. § 391 (1964).

[16] 30 U.S.C. § 191 (1964).

[17] General Services Administration. *Inventory Report on Real Property Owned by the United States Throughout the World, June 30, 1966,* Washington, D. C.

BURNETT HALL

Land Grants to States

ONE OF THE GREAT ideas that marked our early public land policies was that grants of Federal lands should be made to each state as it entered the Union to provide a basis for its development.

This Federal policy has been the foundation for various forms of progress throughout the country. Its most notable contribution was the furnishing of funds to establish and operate public school systems which today guarantee to each American an education to whatever level he or she can achieve.

The congressional policy which has provided grants of public domain lands to states had its inception in the Ordinance of May 20, 1785, which called for a rectangular system of surveys of public lands before sale and required the reservation of "lot No. 16, of every township, for the maintenance of public schools, within the said township . . . ." [1] This philosophy was carried into Section 7 of the Act of April 30, 1802,[2] by which Ohio entered the Union as the seventeenth state:

> That the section, number sixteen, in every township, and where such section has been sold, granted or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.

This practice of reserving section 16 for schools continued until the Act of August 14, 1848,[2] when, in providing for the organization of the Territory of Oregon, the pattern of adding section 36 began. Later, upon admission, Utah and Arizona each received two additional sections.[3]

Almost 78 million acres were granted to the states for the support of the common schools. Additional grants, totalling approximately 146 million acres, were made to states other than Alaska for other schools and institutions, railroads, wagon roads, canals and rivers, swamp reclamation, miscellaneous improvements, and other purposes, for a total of about 224 million acres, of which something less than 1 million acres have not actually been transferred and constitute unsatisfied grants. In addition, Alaska was granted selection rights to over 104.5 million acres upon statehood in 1958. Therefore, the grand total of all land grants to all states exceeds 328 million acres, or almost 18 percent of the original public domain.

Land grants to the state fall into four categories. First, there are grants in place, such as the numbered sections for common schools. They are "in place" because they are designated. A second class includes the quantity grants, being of an acreage total, such as those made for various institutional purposes subject to selection by the beneficiary states from the available public domain. The third class includes lands of undetermined extent, such as the swampland grants, title to which passes immediately upon enactment of the granting statute or survey, although identification is contingent upon subsequent satisfactory proof of qualifying facts. The fourth class comprises indemnity or lieu-selection grants, those made to compensate states for in-place lands which are unavailable to them because of reservations for Federal purposes or prior appropriation of the land by third parties under applicable public land laws.

Major problems that have emerged from the history of land grants to the states remain to be solved. Some states have requested additional grants to equalize their grants with those received by other states that received greater acreage. Some original grants remain unsatisfied for one reason or another. In the case of Alaska, serious impediments have developed in fulfilling the 1958 quantity grant of 104.5 million acres.

No Further Land Grants

Recommendation 104: No additional grants should be made to any of the 50 states.

[1] Paul W. Gates and Robert W. Swenson, *History of Public Land Law Development*, p. 65. PLLRC Study Report, 1968.

[2] 2 Stat. 173, 175.

[3] 9 Stat. 323, 330.

As the table illustrates, public land states have not been uniformly treated in the Federal disposition of land grants. The eleven western states did not receive nearly as large a percentage of their areas as the midwestern and southern states. Even when measured solely by the acreage granted, only Arizona and New Mexico received as much land as states like Louisiana, Michigan, Minnesota, and Wisconsin among others.

It should also be noted that, with the possible exception of Minnesota and Oregon, only those states admitted after the Civil War have retained substantial portions of their grant lands. With some exceptions, it can be fairly said then that those earlier states that received the most kept the least of their grant lands.

The legislatures of two states, Arizona and Nevada, have adopted resolutions favoring additional grants of land. While plausible arguments have been advanced by them, and conceivably might be made by some other states as well, we are convinced that such requests could not be considered unless Congress were willing to reopen the whole matter of disparities among the 28 other states that have received public land grants. At the time of admission to the Union, each state in effect entered into a compact with the United States setting forth the terms of its admission, and we do not believe that they should be disturbed.

Commencing with Ohio, the traditional requirement has been that the new public land states must adopt an "irrevocable ordinance" preliminary to admission to the Union in which they recognize the property rights of the United States in the public lands, and that all Federal property shall be immune from state taxation. In addition, the states have agreed not to tax transferees of Federal lands for a stated period and to tax nonresident ownerships the same as those of residents.

In this sense, public land grants to states have not been strictly unilateral bounties, but rather important elements of bilateral compacts. These varied widely according to the circumstances of the times, and Federal land grants were part of the package. In our view, equity does not demand adjustments in these sovereign contracts.

Nevada was originally granted sections 16 and 36, totaling 3.9 million acres of land. After some experience indicating that these in-place lands were not of good quality, the state decided that it would rather obtain the privilege of selecting land on a quantity basis instead of the in-place grant. This would permit

COMPARISON OF LAND GRANTS TO STATES

State	Total Area of State	Total Acres Granted	% of Total Area Granted	Rank in Order of % of Area Granted
Alaska	375,296,000	104,568,280	27.9	7
Florida	37,478,400	24,118,000	64.3	1
Minnesota	53,803,520	16,422,051	30.6	5
New Mexico	77,866,240	12,789,916	16.4	12
Michigan	37,258,240	12,142,846	32.6	4
Arkansas	33,986,560	11,786,834	34.7	3
Louisiana	31,054,720	11,231,032	36.2	2
Arizona	72,901,760	10,543,753	14.5	15
Wisconsin	35,938,560	10,179,804	28.3	6
California	101,563,520	8,825,106	8.7	19
Iowa	36,025,600	8,061,262	22.4	8
Kansas	52,648,960	7,790,747	14.8	14
Utah	54,346,240	7,464,497	13.7	17
Missouri	44,599,040	7,417,022	16.6	11
Oregon	62,067,840	6,959,405	11.2	18
Mississippi	30,538,240	5,887,064	19.3	9
Montana	94,168,320	5,871,058	6.6	24
Illinois	36,096,000	5,754,655	15.9	13
Alabama	33,029,760	4,766,883	14.4	16
Colorado	66,718,080	4,433,898	6.6	24
Wyoming	62,664,960	4,139,209	6.8	23
Indiana	23,226,240	3,916,334	16.9	10
Idaho	53,476,480	3,639,554	6.8	23
Nebraska	49,425,280	3,458,711	7.0	21
South Dakota	49,310,080	3,435,373	7.0	21
North Dakota	45,225,600	3,163,551	7.0	21
Oklahoma	44,748,160	3,095,706	6.9	22
Washington	43,642,880	3,044,471	7.0	21
Nevada	70,745,600	2,723,647	3.8	25
Ohio	26,382,080	2,128,862	8.1	20
Total	1,836,232,960	319,759,585	17.1	

a qualitative selection. The state agreed to reduce its entitlement under the Statehood grant to 2 million acres, in addition to the 61,967 acres that had already been transferred to it under the original grant. The result is that in percentage terms, Nevada, in relation to other states, received the lowest percentage of its area in land grants and the second smallest amount in total number of acres.[4] The history of this transaction underlines the fact that the grants represent the consummation of contracts negotiated between the Federal Government and the states.

Moreover, any attempt to equalize land grants among the states in some fashion is neither feasible nor practical. Some of the states do not have available public domain within their borders to satisfy their potential claims. To bring all the public land states, past and present, up to the point where each one would have received the same percentage of its area as Louisiana (36.2%) would liquidate every acre of the remaining public domain, including the major conservation programs of the National Park Service, the Forest Service, and the Fish and Wildlife Service. Even then, no state would approach the percentage of the area granted to Florida (64.3%).

We do not believe that continuing with the *status quo* would be unfair. Our recommendations elsewhere would require payments in lieu of taxes related to the burdens on states and communities within which Federal lands are located. In addition, we are recommending limited liberalization of the land disposal laws in several particulars. Therefore, we do not agree that additional land grants to states are needed for the main purpose for which grants have previously been used, i.e., to put more land on the tax rolls in the public land states.*

Final Satisfaction of Original Grants

Recommendation 105: Within a relatively brief period, perhaps from 3 to 5 years, the Secretary of the Interior, in consultation with the involved states, should be required to classify land as suitable for state indemnity selection, in reasonably compact units, and such classifications should aggregate at least 3 or 4 times the acreage due to each state. In the event the affected states do not agree, within 2 years thereafter, to satisfy their grants from the lands so classified, the Secretary should be required to report the differences to the Congress. If no resolution, legislative or otherwise, is reached at the end of 3 years after such report, making a total of 10 years of classification, selection, and negotiation, all such grants should be terminated.

To understand state land grant problems, it is essential to recognize the general rule that quantity and other grants, subject to selection, can be made only from "vacant, unappropriated, non-mineral, surveyed public lands within the State to which the grant was made." However, if they are otherwise available, lands may be selected which have been withdrawn, classified, or reported as valuable for coal, phosphate, oil gas, or any other leasable minerals, on the condition that the minerals for which the lands are considered valuable are reserved to the United States.[5] Moreover, since 1785, no disposal of public domain land has been effective until a survey into township and sections has been completed.

Prior to the survey, however, the land has been subject to appropriation, under various laws, by third parties, and to withdrawal for Federal purposes. If either of these situations exists in a particular grant land, an in-place grant is frustrated and the area also is not available for selection to satisfy a quantity grant. Commencing with the admission of Ohio, Congress has allowed the selection by the states of other public domain land as indemnity for grants which have been thwarted for either of these reasons.

Particularly with regard to numbered sections granted for common schools, Congress has recognized the position of the states and has periodically liberalized their lieu-section rights to replace such lands. The original Ohio Enabling Act gave "equivalent" lands where section 16 proved to be "sold, granted or disposed of . . ."

Prior to 1927, there was uncertainty as to whether in-place grants passed to the states if the lands were mineral in character. This led to confusion regarding title. The matter was resolved when an act was passed making it clear that mineral lands encompassed within-place grants did pass to the states.[6]

[4] The total of 2.7 million acres shown in the accompanying table includes grants in addition to the "Statehood Grant."

* Commissioners Bible and Baring submit the following separate views: The Commission's report has recommended against land grants from the Federal Government to the individual states. We do not agree with this decision. We believe Nevada's justification should have been sustained by Commission members. Nevada stands at the bottom of the 50 states in percentage terms with relation to lands granted to it by the Federal Government. It is our opinion the Federal Government should give consideration to states such as Nevada which are desperately in need of additional lands to expand the tax base and insure future growth. Therefore, we do not concur with the majority views.

[5] 43 U.S.C. §§ 851–852 (1964), as amended, (Supp. IV, 1969).

[6] 43 U.S.C. § 870 (1964).

Today general legislation derived from legislation adopted in 1859 and amended as recently as 1966, provides for indemnity selections by the states.[7] The latter may select "lands of equal acreage" when school sections: (1) have been occupied by preemption or homestead settlers prior to survey; (2) are included within Indian, military, or other reservations before title could pass to the state; or (3) prove to be short of acreage through survey or any natural causc. Of course, selection of indemnity land constitutes a "waiver by the State of its right to the granted or reserved sections." The states have the option to await the extinguishment of any reservation and then take the numbered sections. In other words, there is no statutory requirement that lieu selection rights must be exercised within any particular time period. Also, the Secretary of the Interior, without awaiting survey, has the duty to determine the number of unsurveyed townships within Federal reservations, and the states are entitled to select indemnity lands, section for section.

The same 1966 Act permits the states to select indemnity lands from "any unappropriated, surveyed or unsurveyed public lands within the State . . ." Selections may include mineral lands or reserved mineral interests in lands previously conveyed to others, but only if the grant lands lost are also mineral. If the selected lands are on a known geologic structure of a producing oil or gas field, they will be granted only if the lost lands also are on such a structure. Even land subject to mineral lease or permit may be selected as indemnity for lost mineral lands if the selected land is not in "producing or producible status," and the state then succeeds to all the rights and obligations of the United States. In such cases, the state must select all of the land under the lease or permit, or the United States otherwise reserves the mineral interest in the lease or permit for its duration and pays over to the state 90 percent of the state's share of rents and royalties prorated according to the acreage selected by the state. The mineral status of lost grant lands must be determined upon the best evidence available at the time of application for selection.

Remaining Problems

Notwithstanding the progressive statutory liberalization of the states' rights to select indemnity lands, the Department of the Interior (because of a view that it must preserve the bulk of the public domain in Federal ownership) has tended to resist lieu selections when the Bureau of Land Management believes the value of the selected land exceeds the value of the lost land.

[7] 43 U.S.C. §§ 851–852b (Supp. IV, 1969).

It is apparent from the preceding discussion that present law affords no explicit support for an "equal value" test. Indeed, the executive branch sought to have the 1966 lieu selection amendments include a provision denying the states the right to select lands valuable for leasable minerals, unless the lost mineral lands were of equal value. Neither the House of Representatives or the Senate approved the proposal, and the Senate report rejected the suggestion as "extraneous." [8]

In a 1963 opinion, the Attorney General suggested that the Secretary might use his discretion under section 7 of the Taylor Grazing Act to prevent such selections, at least until considered by Congress.[9] Despitc the congressional refusal to adopt the equal-value restriction, the Secretary of the Interior has approved guidelines proposed by the Director of the Bureau of Land Management for handling cases of disparity of values between selected and lost lands. Under these guidelines, values are estimated for lost lands in their "native" condition, i.e., at time of grant, and for selected lands in their "present" conditions, .i.e., at time of selection. It should be noted that these guidelines are made applicable to *all* indemnity selections and are not limited to those involving mineral lands.

Other reasons also have contributed to the slow pace in completing the outstanding grants. Among these are disagreements on the acreages due, lack of funds for surveys, lack of mineral examinations, and administrative delays by Federal and state agencies.

The difficulties involved in obtaining satisfaction of land grants primarily affect two states, Arizona and Utah. More than three-fourths of the remaining 900,000 acres of unsatisfied grants are owing to these states.

Preference For State Grants

Federal agencies should give preference to satisfaction of outstanding land grants over the other land management functions. There is no evidence, however, that any preference has been given by Federal agencies to the satisfaction of state land grants. Original surveys are those which permit completion of land grants, and each state director of the Bureau of Land Management establishes his own survey priorities. Normally, resurveys have been given priority over original surveys. It is understandable that those states with large amounts of public domain still inside their boundaries appear impatient with restrictive policies or practices concerning their

[8] S. Rep. No. 1213, 89th Cong. 2nd Sess. (1966).

[9] For the opinion of the Attorney General and those of the Department of the Interior on the same subject see Utah Indemnity Selections, 70 Interior Dec. 65 (1963).

rights to select lands as indemnity for in-place grants lost to them through no fault of their own.

Preferential treatment of state land grants is justified because the grants represent an obligation to the states which should be satisfied. Also, settled ownership patterns in public land areas will aid in effective Federal agency land use planning. We recommend certain other specific measures to accomplish this objective.

Certainty of Acreage

The Bureau of Land Management should be required by law to specify exact acreage by type for unsatisfied grants for each state, and file a report with Congress on the results to be followed by annual reports thereafter. All problems associated with unsatisfied land grants cannot be solved by changes in the law alone. However, the process of satisfying the grants can be speeded up and some of the problems alleviated.

Failure to agree on the extent of unsatisfied grants has caused state officials to question Federal acreage computations, with the result that they are reluctant to complete their selection programs in the absence of agreement.

Discrepancies should be cleared up and a firm figure established for all unsatisfied grants. This would serve to remove the distrust of Federal records by state officials. An audit should be made of unsatisfied grants and firm acreage figures established in cooperation with the recipient states. The figures should be kept current with an annual audit, the result of which should be reported to Congress.

Segregation Upon Selection

State selections should segregate the selected land from all forms of entry and from any form of withdrawal, classification, or conflicting disposal. State selection does not segregate land against Federal agency withdrawals or third-party entries under other public land laws.

To provide for such segregation would demonstrate a good faith intention on the part of the Federal Government to honor the commitment of state land grants. It would encourage state authorities to proceed with the administrative work required on the part of the state to complete the selection process and satisfy outstanding grants.

Priority for Surveys

Priorities should be given to surveys needed to complete state selections, including allowing the states to provide their own surveys to complete land grants. Any program designed to complete the satisfaction of grants to the states requires an accelerated survey program.

The assignment of cadastral survey personnel to Bureau of Land Management offices has been rigid. Consequently, there are shortages of personnel in some areas where sizable state land grants are outstanding. There should be flexibility in the assignment of survey personnel, such as the transferring of crews from low to high priority states. Furthermore, it appears unnecessary with modern methods of protraction surveys to require line surveys as a condition to conveyance of title. Later, on-the-ground surveys can and should be made to assure the certainty of boundaries.

Fixing a priority for the satisfaction of state grants in surveys of grant lands will not in itself solve the problem of unsatisfied grants. Other programs will require surveying priority, and budgetary considerations may dictate that those programs be given precedence. Therefore, there appears to be no good reason for not permitting the states to supply their own surveys under careful supervision of the Bureau of Land Management when they so desire.

State Participation in Programs

The major recommendation for a program to liquidate the unsatisfied grants is practical. Nothing in this recommendation would preclude a state from suggesting an area for consideration by the Secretary, nor is there valid reason why the Department of the Interior and the states should not reach a good faith agreement in 10 years.

Failure to complete surveys and lack of agreement on lands eligible for selection have been the chief sources of delay in the past. In some instances it appears that the states have not moved forward as vigorously as they could have in making selections. Neither side would appear to have any advantage to gain from further delays. All that is required are prompt action and mutual efforts.

Removal of Limitations

> Recommendation 106: Limitations originally placed by the Federal Government on the use of grant lands, or funds derived from them, should be eliminated.

Land grants to the states were made for a variety of purposes. The hasty and ill-considered disposition of much of the land included in early grants led Congress to impose more specific and stringent conditions on later grants.

The earliest, and some of the largest, grants were made for the support of education. The common

school funds established as a result of these grants, however, generate only a small fraction of the total amount spent on education by the past or present public land states. In no state does the trust fund generate more than 6.8 percent of the total expended, and in all but 4 states less than 3 percent is so generated. *While the Commission does not oppose dedicating grant lands to education, it favors leaving to the state legislatures the decision as to how and when to apply this policy.*

Lands granted for a particular purpose have been considered to be held in trust by the state for the purpose granted. If the lands are disposed of, the proceeds, in turn, are to be held in trust for the grant's stated purpose.[10]

In modern times these restrictions have frequently proved to be obsolete and burdensome. In Ohio, for example, a provision which required the state to obtain the consent of the inhabitants of the township in which the land was located prior to a sale of school grant lands and then invest the proceeds for the use of schools in that township, led the state to seek and secure congressional relief from the grant restrictions. Under a 1968 Act of Congress,[11] the proceeds from such sales may now be used for whatever educational purposes the Ohio legislature deems appropriate.

Faced with problems similar to those of Ohio, other states have acted unilaterally, by amendment to state constitutions or by state legislation, to relieve themselves of burdensome restrictions. Such practices are of questionable legality, however, because the actions seem to attempt to nullify the conditions of grants from the United States.

The Commission believes that lands granted to the states will better serve the purposes for which they were granted if unrealistic and narrow restrictions on the grants are removed. The disposition and management of such lands, as well as the funds generated by them, should now be left to the discretion of the various state legislative bodies.

Alaska

With over 95 percent of all of its land federally owned, Alaska, for more than one reason, presents a unique situation. At the time of the last official census, there were slightly more than 1,500 acres of public land for each person in the state.

The Alaska Statehood Act[12] granted to the state more than 104 million acres to be selected from the unreserved public lands within the state. Recognizing that the viability of the state government and the growth potential of the state would be determined in its formative years by the availability of land and resources for economic activity, the Act designated that 102,550,000, acres of the total grant were to be for general state purposes.

The right to select land under mineral lease expired on January 3, 1969; the right to make selections of other lands continues until 1984. The state has selected about 25 percent of the land necessary to satisfy its grants.

The Commission has concluded that, in accordance with the view of Congress at the time of the state's admission, the general role of federally owned lands in Alaska should be oriented to facilitate the state's selection rights in order to serve the objective or regional economic growth and assurance of the viability of Alaska as a state. If the state is allowed to complete its selection process expeditiously, it may be anticipated that it will select those lands that will be more valuable in non-Federal than in Federal ownership. It will then be the responsibility of the state to determine the future role of these lands in its economy. Haphazard disposals of Federal public lands thereafter could be contrary to the well developed plans made by the state for regional and local land use, and could burden the state and local governments with additional responsibility without corresponding benefit.

Lack of cadastral surveys, Federal agency classifications, and Federal and state administrative delays have all contributed to the delay in satisfaction of the grants to Alaska. But the primary impediment to completion of the state selection program is the claims asserted by the Alaskan natives to most of the land available for selection.

The United States, while reserving the right to extinguish aboriginal claims, traditionally and consistently sought to recognize the rights, through purchase or other form of cession, of those native groups owning land prior to the acquisition of an area. When this country purchased Alaska from Russia in 1867, there were many native inhabitants (classified as Aleuts, Indians, and Eskimos) in the territory.

Whenever the question has arisen, Congress has taken the opportunity to assert and reassert that the claims of natives to the use, occupancy, and ownership of land in Alaska would be protected, and statutes, including the Statehood Act, that might be in conflict with such rights, whatever they may be, contain provisions asserting that they are not intended to, and do not have the effect of, jeopardizing those rights.[13] We believe that we, as a Nation, must provide for an equitable settlement of the claims asserted by the Alaskan natives.

[10] See Lassen v. Arizona, 385 U.S. 458 (1967).

[11] Act of May 13, 1968, 82 Stat. 120.

[12] See § 6 of the Alaska Statehood Act, 72 Stat. 339, as amended, 48 U.S.C. p. 9026 (1964).

[13] See § 4, *id.* at 9025.

During the time that this Commission has been making its review, the appropriate committees of Congress undertook consideration of legislation designed to settle the land claims asserted by the Alaskan natives. Accordingly, this Commission, in anticipating an early legislative resolution, has not duplicated the work of the congressional committees, even though we recognize that, until this matter is settled, it will, at best, be difficult for the State of Alaska to complete its selection program and that many other land actions will be adversely affected. *We strongly recommend the early enactment of legislation to resolve the problem of native claims and end the current impasse.*

Identification of Retained Lands in Alaska

> Recommendation 107: The satisfaction of Federal land grants to Alaska should be expedited with the aim of completing selection by 1984 in accordance with the Statehood Act, and selections of land under the Alaska Statehood Act should have priority over any land classification program of the Bureau of Land Management.

Certain withdrawn and reserved public lands in Alaska were excluded by Congress from lands subject to selection at the time of statehood.[14] Since then, other lands have been withdrawn by both Congress and the Executive. These are said to be lands which serve a significant national purpose by various Federal agencies and, as the Commission has recommended in connection with public land withdrawals, should be set aside by an Act of Congress.

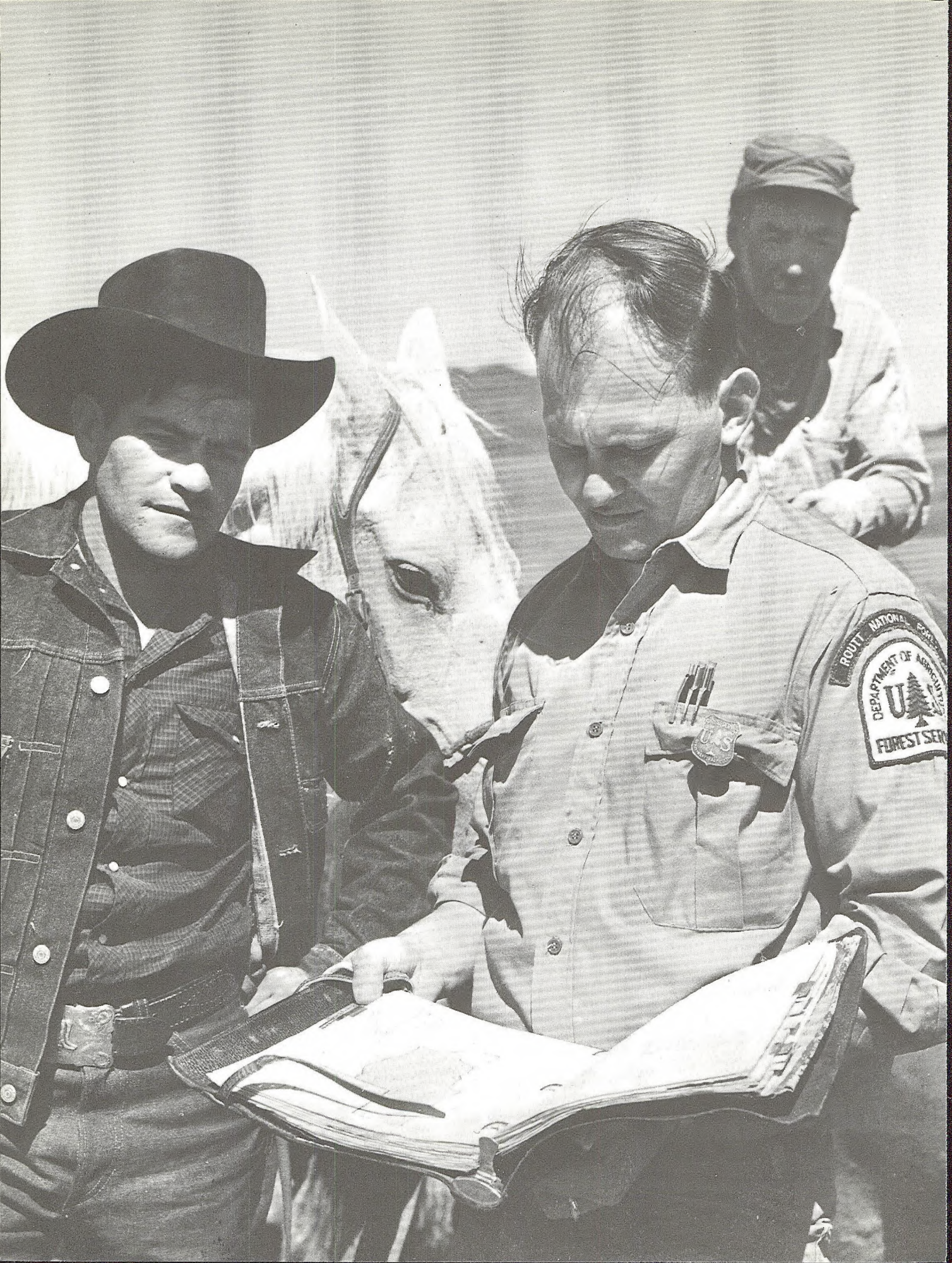
The important facet, in connection with Alaska, is that impediments to state selection be removed and that no further obstructions be emplaced by the Federal Government. The first step to minimize the effect on state selection policy is for the public land management agencies to identify and recommend to Congress as soon as possible, the lands considered to have national significance warranting retention by the Federal Government.

Although the selection process should and will continue while this identification is being made, a reasonable time limit must be imposed for the completion of this action beyond which lands not proposed to Congress for retention will be available without question for state selection. The significance of this suggestion is underlined by the fact that at least one Bureau of Land Management classification decision has precluded general state selections under the Statehood Act, despite the fact that there were areas that might well have been attractive to the state.

The exensive use of such classifications which preclude state selection could frustrate the objectives of the Statehood Act and the recommendation of the Commission to the effect that the Act should be implemented as expeditiously as possible. Additionally, the cadastral survey program in Alaska should be strengthened through increased funding to allow survey work to be performed at a faster rate. There is an immediate need for such survey work; it should not be delayed further.

As a corollary to the foregoing, there is an urgent requirement to fulfill the grant of national forests lands for community expansion on an orderly schedule. The 400,000 acres of national forest land should be selected and turned over the state on a basis that will assure completion of this grant, too, by 1984. Controversies between the state and the Forest Service as to the need for expansion of existing communities, including recreation areas, must be resolved. We believe that the Statehood Act must be viewed liberally in order to achieve the legislative intent and permit completion of selection by 1984. In the same manner that we said earlier that states should be bound by their contractual commitments with the Federal Government, the Federal Government must likewise be bound. Federal agency reviews cannot be allowed to stand in the way of fulfilling the commitment of the United States to give these lands to the state.

[14] University of Wisconsin, *Federal Land Laws and Policies in Alaska,* Ch. II. PLLRC Study Report, 1970. The Statehood Act also required approval of the President, because of national defense needs, for any selections in the northern part of the state and in the part of the state bordering on the Bering Sea. However, all selections in this area have been approved to date.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CHAPTER SIXTEEN

Administrative Procedures

TO CARRY OUT statutory policies applicable to public lands, it is necessary to have administrative rules and regulations that set forth clearly the manner in which interested members of the public may have their points of view taken into consideration. Similarly, it is essential that those who come in contact with government agencies, seeking rights or privileges that are provided for by Congress, have confidence that they will be dealt with fairly.

The rules and regulations that comprise administrative procedures are frequently a citizen's only contact with his government. Nevertheless, this Commission heard from members of its Advisory Council, from Governors' Representatives, and from many of the witnesses who testified at its public hearings that opportunities for public participation were inadequate, and that many citizens had no confidence in being treated fairly by the public land management agencies of the United States Government. This circumstance alone underscores the significance of the subject matter of this chapter.

The general pattern of legislation providing for public and private rights and privileges to the public lands and their resources has been for Congress to state general policies and to delegate to the Federal land managing agencies broad discretion to implement the statutory policies. The procedural mechanisms by which administrative implementation is carried out take two forms: (1) *rulemaking,* or the development and promulgation of substantive and procedural regulations designed to announce the standards under which a statute will be administered; and (2) *adjudication,* or the application of statutes and regulations to particular factual situations on a case-by-case basis to determine whether applicants are entitled to the various rights or privileges provided for by law.

The study report prepared on Administrative Procedures for the Commission [1] confirmed the existence of serious procedural problems related by witnesses at the Commission's public meetings and in recommendations from members of the Advisory Council and the Governors' Representatives.

It is obvious that procedures should not only assure efficient and expeditious implementation of the statutory programs, but should embody proper regard for traditional due process concepts of fairness and equity between the Government and its citizens. Further, we consider it essential to avoid a piecemeal approach to procedural problems and have made our recommendations within a unitary framework which recognizes the close interrelationship among the rulemaking, adjudication, and judicial oversight functions.

Need for Rules and Regulations

> Recommendation 108: Congress should require public land management agencies to utilize rulemaking to the fullest extent possible in interpreting statutes and exercising delegated discretion, and should provide legislative restrictions to insure compliance with this goal.

The lack of specific and meaningful guidelines in most of the public land laws is a significant contributing factor underlying many procedural complaints. Elsewhere in this report we have recommended more specific statutory guidelines as essential to improved public land management. We recognize, however, that as a practical matter detailed rules often cannot or should not be written into statutes, so that varying degrees of discretion must necessarily be delegated to the administrative agencies. This delegated discretionary authority should be exercised to the maximum extent possible through regulations promulgated for the guidance of the public in a timely manner, rather than on a case-by-case decisional basis.

Agencies should be required to state in their regulations: (a) any administrative interpretations of statutory language, and (b) the standards under which statutory rights are to be administered and

[1] University of Virginia, *Administrative Procedures and the Public Lands.* PLLRC Study Report, 1969.

discretionary authority exercised. This will promote greater certainty in the administrative process, which is at the heart of any legal system. It will also facilitate congressional oversight to determine whether policies are being carried out in accord with congressional intent. Where administrative implementation is revealed only, or largely, in a multitude of unrelated and usually factually distinguishable case adjudications (as in the case of Bureau of Land Management functions), this type of congressional review often becomes futile. Such regulations should include those portions of the voluminous unpublished agency staff manuals and instructions which often contain indispensable informations for an understanding of the policies and operations of the agencies.

Past experience indicates that some device is necessary to compel the agencies to issue meaningful regulations instead of mere paraphrases of statutory language. Consequently, we recommend that agencies be prohibited from adjudicating any case other than in accord with standards and interpretations contained in published regulations. Where Congress has provided statutory rights, the agencies should be prohibited from denying the right on any grounds not stated in the regulations. With respect to discretionary cases, agencies could not exercise "reserved discretion" for the first time in particular adjudications. Rather, deviation from published standards could only be accomplished through a rulemaking procedure. We feel that the possibility of occasional unforeseen results in unique cases is outweighed by the advantages of carrying out policy under firm, clearly stated regulations. Since the rulemaking function is quasi-legislative in character, its exercise should be prospective and not retroactive.

The existing rulemaking machinery and procedures of the public land agencies are inadequate to implement the enhanced role we recommend for substantive regulations in policy formulation and implementation. *Deliberately instituted and specially staffed organizations are essential.* This should be an integral part of policymaking and not be relegated to the clerical or housekeeping level.

Similarly, the agencies must be directed to respond to the increasing need and demand for greater public participation in public land decision making. The Administrative Procedure Act of 1946 [2] contains mandatory guidelines for rulemaking procedures generally requiring public notice and opportunity for the submission of comments and views by interested parties. However, since it exempts matters relating to "public property," [3] the public land agencies, other than the Federal Power Commission, have not considered themselves subject to the Act's rulemaking criteria. Nevertheless, the Bureau of Land Management has voluntarily followed the Act's requirements in most rulemaking actions. The Forest Service has not employed such formalities, but in practice has developed its more important regulations with a significant degree of informal communication with organizations interested in national forest policy.

We find no good reason why rulemaking provisions similar to those contained in the Administrative Procedure Act should not be made applicable to the public land agencies, particularly in light of the exception which permits such formalities to be dispensed with "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [4] A statute specifically applicable to public land would be preferable to deletion of the "public property" exemption of the Administrative Procedure Act, which might have unintended consequences affecting nonpublic land functions of Federal agencies. We also recommend greater use of public hearings where regulations are being developed in significant policy areas, as was required in the Classification and Multiple Use Act of 1964.[5]

Advisory Boards

Citizen advisory boards should be used to advise the heads of the land administering agencies on public land policymaking. We believe there is substantial value in bringing a representation of citizen views into continuing and formal contact with public land policymakers through the use of national public land policy advisory boards which we recommend be established in Chapter Twenty. A board's primary function would be to advise the head of the agency on contemplated changes in any and all aspects of public land policy, whether by regulation or legislation.

Although this policy advisory board could also be looked to for advice on other matters, such as specific controversial land use matters, its functions would be primarily to advise on board policymaking applicable to the agency's public lands throughout the Nation. We contrast this function with the role we have recommended for advisory boards at the field level: To advise on specific public land use plans as they affect various interests at the regional and local level.

Like our own Advisory Council, members of national boards or councils should be selected so as to represent a broad spectrum of national and regional groups.

[2] 5 U.S.C. §§ 1001–1011 (1964).

[3] *Id.* at § 553.

[4] *Ibid.* The Administrative Conference of the United States has recommended the elimination of the "public property" exemption. See the Conference's First Annual Report, Recommendation No. 16, p. 45 (1970).

[5] 43 U.S.C. §§ 1411–1418 (1964) as amended, (Supp. IV, 1969).

Adjudication Procedures

Recommendation 109: Congress should direct the public land agencies to restructure their adjudication organization and procedures in order to assure: (1) procedural due process; (2) greater third party participation; (3) objective administrative review of initial decisions; and (4) more expeditious decision-making.

The "adjudication" or fact finding and decisional authority to determine whether a particular applicant for a public land right or privilege meets the standards specified in the laws or regulations is generally vested by Congress in a departmental Secretary. It is thereafter normally delegated to subordinates, with a reservation of ultimate supervisory authority in the Secretary. Initial decisions are generally made at the field level, with provision for administrative review by intradepartmental "appeals" through levels to the Secretary for "final" decision.

We find procedural problems in existing adjudicative procedures in two broad areas: (A) informal and formal procedures for developing the factual record for decision; and (B) the appellate decision-making structure as it bears on (1) separation of the adjudicatory function from other investigatory, advisory or program responsibilities, and (2) delays in rendering "final" decisions.

Procedures For Developing the Factual Record For Decision

Most adjudicatory actions are informal and are initiated by the filing with the appropriate official of an application for a right or privilege, or the submittal of a bid, as for timber or an oil lease, pursuant to invitation. The matter is then largely out of the hands of the applicant or bidder, who often has no idea as to the facts and considerations upon which this initial decision will be based.

Similarly, it is clear that in a number of situations reports, comments, etc., are thereafter furnished to the adjudication officer as part of his decisional process which the applicant neither is aware of nor has an opportunity to rebut at this stage, although he may be granted such opportunity *if* he should take an appeal from an adverse decision.

The shortcomings of this system are strikingly detailed in the contractor's report which stresses that, with the exception of the Federal Power Commission, there is little assurance that due adjudicative process will be afforded most applicants for public land dispositions.

The fact that Congress may leave certain necessary matters to the Secretary's discretion does not mean that such discretion should not be exercised in accordance with procedural due process, *i.e.*, upon full and fair consideration of all the facts that can be brought to bear on a case, including those that might be adduced by the applicant. Nor is it necessary or fair to exercise such discretion in reliance on secret reports or oral communications, of which the applicant has had no notice nor an opportunity to answer. In this regard, we believe that express provision might well be made in administrative appeals for direct and open participation by the Government official rendering the initial decision below to help eliminate complaints about *ex parte* communications to the appellate level.

Hearings

The situation is different where formal hearings, or trial type procedures, are used to develop the record for decision. In such situations, the record produced at the hearing is the sole basis for decision, and the applicant is afforded procedural due process in that he is able to adduce evidence, cross examine witnesses, and rebut evidence produced by the Government or third parties. The greater regard for fair procedures which the hearing process embodies is apparently the reason for the voluminous testimony at the Commission's public meetings recommending "hearings" in a greater variety of public land adjudications.

However, achievement of the goal of procedural due process does not require a formal hearing in each case, particularly since they are costly and time consuming. The trend in administrative law generally is away from such adversary hearings and toward more informal proceedings. *Informal procedures—with applicants being given full opportunity to participate in the making of a factual record, to know its content, to offer rebuttal information, and to participate in any oral presentations—should generally be provided for by Congress,* except in transitory situations, *e.g.*, overnight camping permit applications. Mandatory formal administrative hearings now required by law should be continued and are recommended for certain other situations elsewhere in this report. In any event, the land management agencies should retain authority to hold hearings in their discretion and should be encouraged to use it as the significance of a particular action requires.

Third Party Interests

With the exception of the Federal Power Commission, there is inadequate provision for meaningful participation by third parties in the adjudicative process, whether formal or informal. Because notice

of many adjudicatory actions is not adequately provided for by either statute or regulation, such opportunities for participation as there are, may be rendered nugatory to all but the most aggressively alert. It is becoming increasingly clear that adequate records for decisions on important public land use matters will not always be produced when the only parties allowed to participate are one or more applicants and the responsible agency.

Potential competitors for, or protestants to, any particular action should be heard if the public interest is to be fully served. They should be entitled to procedural due process equal to that afforded the principal applicant. We recognize that greater concern for third party interests, both in initial decisions and in appeals, raises possibilities of additional delay, but this risk is outweighed by the benefits we believe will flow from greater public participation. Furthermore, adoption of the recommendations we make will eliminate many of the delays.

Consequently, *we recommend that Congress require the agencies to give meaningful public notice of all proposed public land transactions to the maximum extent feasible, and to provide for the intervention and participation by interested economic competitors, state and local governments, and members of the public.* Notice to the public should be accomplished at least by prominent publication in a newspaper of general circulation in the area involved.

Administrative Appeals

Perhaps the most consistent complaint heard at the public meetings was that the review procedures provided for by the administrative review systems of the Bureau of Land Management and the Forest Service were largely illusory because those who sat in judgment on "appeal" were part of the establishment that had made or participated in the initial decision. With respect to appeal of initial decisions in nonhearing cases from a Bureau of Land Management land office to the BLM Director, it was argued that the Director could hardly be expected to render an objective decision on appeal in a matter involving one of his subordinates who was carrying out official BLM policy. As noted later in this chapter, available evidence does not fully substantiate this claim. The same argument is made with respect to Forest Service appeals from regional foresters to the Chief of the Forest Service.

Similar complaints were voiced with respect to appeals from the BLM Director to the Secretary. Since the appeal is in fact taken to the Office of the Solicitor, the Department's chief legal officer to whom the Secretary has delegated his authority respecting appeals, it is claimed that an objective decision is made difficult because the Solicitor's office also serves as legal advisor to the BLM Director and field personnel. Although we recognize the fundamental difference between the administrative review function and a judical appellate system, we find that these complaints have merit. The decision-making structure is certainly conducive to the vices complained of, although we think they are not as prevalent in actual practice as has been argued.

However, the fact that the advisory and adjudicatory functions are carried out by separate branches of the Solicitor's office (at least with respect to BLM and Geological Survey appeals) appears to be generally unknown to the public. Moreover, it does not fully mitigate the appearance that a single office of the Secretariat baldly serves as both advocate and judge in the same case, and appearances are important, whatever the reality may be. The same situation prevails in the Forest Service, but to a lesser extent because of the utilization of an independent board to render final decisions in a certain limited class of forest appeals.

The result of this general belief that the appeals procedures are so structured as to preclude the wholly disinterested dispensation of justice has been a rather widespread demand for independent boards or examiners to render final decisions in public land matters at various stages of the adjudication process. However, while there is a clear need for a better separation of the various adjudicative functions within the agencies, we believe that the "independent board" approach is not a desirable solution. It would dilute the Secretary's managerial and supervisory authority over public land matters and thus weaken the element of public responsibility which accompanies his authority.

To the extent that wholly independent review of agency decisions is needed, we believe court review is more direct and more consistent with our constitutional view of the separation of powers. Moreover, since appellate review by independent boards can only be fully effective if it can operate against some fairly specific guidelines, either in statutes or regulations, which spell out the nature of rights or privileges at issue and the standards under which they can be acquired, terminated or otherwise affected, the achievement of the latter would largely eliminate the need for any independent administrative review board.

The "independent board" approach recently adopted by the Department of Agriculture in creating a new appellate system incorporating a Board of Forest Appeals to handle a limited class of appeals from initial decisions involving national forest matters does not come to grips with the central problem.[6] The Board renders final decisions only in cases involving

[6] 36 C.F.R. §§ 211.20–.119.

an alleged breach of a written instrument, *e.g.*, timber sale contracts and grazing permits, other than claims for money damages. Its limited functions are similar to those served by traditional boards of contract appeals. In other cases involving matters essentially of discretionary national forest management policy, the Board may only make recommendations for a decision which is to be made by the Chief or the Secretary, or simply forward the appeal without comment. It is too early to judge how well this complex structure has operated. However, its chief deficiencies are (a) that it does not afford any kind of appeal, to the Board or elsewhere, in situations where it is most needed (decisions in which permission for one use or another of the national forests is altogether denied), and (b) that informal appeal routes are apparently available outside the formal system, which weakens the utility of the latter and opens possibilities for discriminatory treatment.

Consequently, *we recommend that Congress provide for Secretarial review adequately insulated from management officials and legal advisors who have participated in decisions below, except for direct, open presentation of argument in support of their decisions.* This might be an independent adjunct to the Secretary's office staffed by specialized reviewing personnel free from the influence of subordinate officials and legal advisors to such officials.

Delays

There was much complaint, also, at the public meetings about delays in BLM and Forest Service decision making. Whether such delays are inordinate cannot be ascertained.

The Department of the Interior asserted in 1968 "that the era of overall 'great delays' in adjudications before the Bureau of Land Management was brought to an end several years ago by virtue of aggressive administrative measures that were taken to remove at least the symptoms, if not the root causes, of the intolerable case backlogs that had previously existed." [7]

The significant change in procedure which was accomplished by the Secretary in 1963, was the splitting off of the "classification" aspect of many BLM adjudications from the decision on the merits. This change, coupled with a provision that a "classification" decision becomes final unless the Secretary exercises his supervisory authority to review the decision within 30 days, has resulted in much speedier action on about a third of BLM's caseload. In any event, there is evidence of recent improvement at both the BLM and Secretary's levels.[8]

As to the cause of current delays, some appear to be inherent in the substantive requirements of the public land laws themselves. A number of statutes have rather detailed proof requirements which must be carefully evaluated *e.g.*, the agricultural land laws. The substantive provisions of other statutes lack clarity and engender extensive litigation—for instance, the requirement of a discovery of "valuable mineral" in order to secure the benefits of the mining law. Personnel limitations play an obvious role, just as they do in connection with crowded court dockets.

Beyond these factors, however, it has been argued that the existing multilevel decision-making structure in Interior and Agriculture may well be unnecessary. In BLM matters, it is often suggested that appeals to the Director could be eliminated and taken directly to the Secretary, thus promoting better initial decisions by officials who know that their actions are subject to immediate top level review. Some contend that the Director's appeal function can be readily eliminated since he only "rubber stamps" the decisions of his subordinates, although we have found no support for such assertions.[9]

Others argue that appeals to the Director should be retained, but that the Secretary should only review significant cases, much as the Supreme Court exercises its discretionary certiorari jurisdiction. Another proposed approach would be to eliminate both appellate levels and permit initial decisions to be appealed directly to the courts. With respect to all appellate levels, moreover, some suggest that a time limit, perhaps 6 months to one year, be set within which a lower decision would become final unless the

[7] The "root cause" was asserted to be "the continuing deferral of the long overdue overhauling and simplification of the 'jungle' of public land statutes," a circumstance that should be significantly alleviated if not eliminated if the recommendations of this Commission are adopted.

Transcript of Commission meetings of April 5–6, 1968 p. 345 (Dept. of Interior submittal in response to question on administrative delays).

[8] The average time required for the BLM Director's decision on an appeal declined from roughly 17 months in 1958 to 9 months in 1962, and then to 5 months as of December 31, 1967.

Some modest recent improvement appears in expediting decisions in appeals to the Secretary from the BLM Director. In 1958 the average time lapse between the Director's decision and the Secretary's decision was 9 months, and in 1968 it was reported by Interior that most decisions were rendered in "from 6 to 12 months." However, the backlog of cases in the Solicitor's Office has been reduced from stultifying levels in the early 1960's to a current average of about 100, which is somewhat below the level that prevailed in 1958. There are no similar statistics available on Forest Service appeals.

[9] The current operations of the BLM Office of Appeals and Hearings do not evidence a rubber stamp character. In the period from January, 1967, to April, 1968, of 591 decisions covering 1,077 cases, 31% either reversed, modified or vacated the decision below.

next administrative level exercised its review authority, thus expediting the invoking of judicial review. This is the system now employed by Interior with respect to its "classification" decisions.[10]

Similar arguments are made with respect to the Forest Service appellate structure.

We do not propose to advise the departments as to precisely how their decisional structures should be reorganized. However, *we do recommend that the number of appeals that must be made to exhaust departmental remedies should be reduced to no more than two, and a time limit for disposition of cases should be imposed at each appellate level to expedite administrative and judicial review. After the first appeal there should be no further right of appeal unless timely granted in the discretion of the Secretary.*

A decision in the first instance, often by a field supervisor, generally should be appealable to an intermediate reviewing authority, and from that authority to the Secretary, and all other intermediate formal or informal appeals (at present as many as five levels of decision making may be involved in some Forest Service cases) should be eliminated. Direct appeal from the field to the Secretary should not be permitted, but the Secretary should have discretion to bypass the intermediate appeal level. He also should have discretion to refuse to hear appeals from the intermediate level, at which time the requirement of administrative finality would be satisfied. After a specified period of time elapses, a decision would be deemed to be affirmed by an intermediate reviewing authority and go on up to the Secretary for final decision. Similarly, the Secretary's decision would be deemed final for purposes of administrative finality after a specified period of time elapsed, so that the case could go on to the courts for review without unnecessary delay. Appropriate exceptions might be provided for, as in situations where decisions are delayed because of pending court litigation affecting the matter.

Judicial Review

Recommendation 110: Judicial review of public land adjudications should be expressly provided for by Congress.

We are convinced that without the availability of some kind of court review, any legislative or administrative improvements in the rulemaking and adjudication procedures heretofore recommended would be largely only advisory. However, under the doctrine of sovereign immunity, grounded on the ancient concept that "The King Can Do No Wrong," the United States may not be sued, either by name, or as to directly affect its property or funds, unless Congress has consented. With respect to adjudications concerning the licensing of hydroelectric projects on the public lands, Congress 50 years ago expressly provided in the Federal Power Act for judicial review of Federal Power Commission orders.[11] Similar review of adjudications by other Federal regulatory agencies has been provided by law. For adjudications of the major public land agencies, however, express statutory provision for judicial review is minimal. Consequently, such limited review as has been allowed has resulted because the courts either ignored the problem of sovereign immunity or bypassed it through various complex legal fictions, a situation which is confused, complex, uncertain, and, in the view of the contractor's study, obviously defective, if not, in fact, ridiculous.[12] The only respectable rationale for the doctrine which is generally recognized is that there should not be undue interference with the official actions of the Federal agencies, a concern which we share.

However, in accordance with traditional concepts of the separation of powers, it is not our intent that the courts would substitute their judgment for that of the agencies in matters committed by Congress to agency discretion. Indeed the courts traditionally have not attempted to, and as a practical matter cannot, substitute their views for those of the agencies in such matters. What judicial review does assure, however, is that (1) discretion is exercised evenhandedly; (2) its exercise is not arbitrary or discriminatory; and (3) guidelines in statutes or regulations are followed. In this context the availability of judicial review should pose no threat or burden to legitimate public land management.

Nevertheless, we are apprehensive about the adverse effect on public land management programs which extensive litigation, such as we have witnessed in the past year, might produce. Although we believe that this litigation has been caused in large measure by the inadequacy of provision for public participation in the land use planning and rulemaking and adjudication procedures of the agencies (which our other recommendations would provide for), part of

[10] See 43 C.F.R. 2411.1-2(e)(1).

[11] 16 U.S.C. § 8251. (1964).

[12] The Administrative Conference of the United States has recommended general statutory reform of the sovereign immunity doctrine. See the Conference's First Annual Report, Recommendation No. 9, p. 40 (1970).

the cause is attributable to a general judicial relaxing of the requirements for legal "standing" as the basis to entitle parties to seek judicial review.[13] *To minimize the dilatory effects of court involvement, we recommend that in general the availability of judicial review be limited to those parties who participated in the administrative proceeding for which review is sought.*

[13] See, *e.g.*, Data Processing Service v. Camp. 397 U. S. 150 (1970).

General Judicial Administration

There are important matters, such as the appropriate forum (for instance, Federal District Court, Federal Court of Appeals or a Public Land Court similar to the Tax Court of the United States); statute of limitations (time limitations within which a suit may be brought); third party participation; and the like, which should be treated in any consent to suit legislation. Because these are details of general judicial administration which may be influenced by other than public lands considerations, we make no recommendations regarding them.

CHAPTER SEVENTEEN

Trespass and Disputed Title

FROM THE INCEPTION of its review, the Commission has been concerned with various aspects of the unauthorized use of public lands. Such uses are called "trespass." In addition to the completely unauthorized regular use and occupancy of real property, trespass also covers additional wrongs against the person or property of another.

Trespass, including vandalism, on the public lands is costly. They often result in the depreciation of valuable resources, and, even when these values are replaced by damages collected, the cost of collection, in many instances, is disproportionate to the ultimate recovery.

The most troublesome trespasses, in many respects, are those involving unauthorized or unlawful occupancy of real property. While, over a given period of time, they are numerically fewer than some other types of trespass, many such occupancies continue unabated for months or years. It is easier, however, to come to grips, at a policy level, with this type of trespass than with other kinds. Accordingly, we have placed our primary focus on the use and occupancy trespass and treated other types of trespass only generally.

Public land trespasses frequently occur because of an honest but mistaken belief that the lands are privately owned. On the other hand, there are cases in which trespass is alleged on lands which, in fact, are erroneously claimed as Federal.

The fact is, then, that honest disputes between the Government and private citizens as to land titles can and do occur. Most often such disputes are occasioned by disagreement over boundary locations or by an assertion by a private claimant, disputed by the Government, that title passed to the claimant or a predecessor in interest under a public land disposal statute. Although they are infrequent, disputes have also arisen over the title to land acquired by the Government by purchase or donation.

Under existing law, once the fact of trespass is clearly established, even the good faith of the unauthorized occupant cannot protect him from the penalty of ejectment. On occasion, Congress has enacted legislation to give some measure of relief to those who occupy Federal lands in good faith.[1] These acts, however, have not always fully accomplished their objective and have generally been very narrowly constructed by the administrators. Without some type of remedial legislation, however, the land management agencies have no authority to grant relief from the consequences of trespass. Their efforts to work out informal administrative accommodations have not been uniform and have resulted in inequality of treatment in various public land areas.

With an expanding population and over 755 million acres of federally owned lands, trespass probably can never be eliminated completely. However, it is possible to reduce its impact by increasing the efficiency of control methods, accelerating boundary determinations, and providing for the final determination of title disputes under methods and procedures that are equitable to both the Government and private claimants.

Increased Efficiency of Control Methods

> Recommendation 111: Statutes and administrative practices defining unauthorized use of public lands should be clarified, and remedies available to the Federal Government should be uniform among land management agencies. Where necessary, statutory authority for policing by Federal agencies should be provided.

Trespass control for the public lands presents unusual procedural and enforcement problems.

Although criminal penalties are provided by Federal statute for some forms of trespass,[2] there is no uniform Federal trespass law, either criminal or civil.

[1] See 43 U.S.C. §§ 1068–1068b (1964); 30 U.S.C. §§ 701–709 (1964), as amended, (Supp. IV, 1969).

[2] See 18 U.S.C. §§ 1851–1863 (1964).

Where there are no governing Federal statutes, state law concerning trespass is applicable where the state has not ceded legislative jurisdiction to the Federal Government. State statutes vary widely. Penalties for the same trespass may be greater in one state than another. Some states have very strict procedural requirements, while those of other states are very informal.

Those who use the public lands and those who administer them are entitled to a clear expression of policy concerning trespass and a more uniform expression of operating rules. At the present time, for example, operating "dune buggies" on Federal lands might be treated as a trespass by one agency but ignored by another agency on similar lands in different areas. Clear definitions, uniformly applied, would make violations more easily identifiable and permit more expeditious enforcement action.

Trespass control is further hampered by differences in procedures and enforcement authority existing among Federal agencies. While the National Park Service maintains a system of park police, and the Forest Service employs forest rangers without police authority, other land management agencies have no comparable services and authority. Instead, they are compelled to call upon local authorities or Federal marshals for assistance to apprehend trespassers and bring them before the proper magistrates. These requirements often result in delays and ineffectiveness in policing Federal lands.

To the extent possible, a single set of procedures for handling various kinds of trespass cases, regardless of agency or type of land, should be established to prevent needless overlapping and duplication of procedures. Further, statutory authority for policing Federal lands should be provided to those agencies not now having such authority to the end that complex enforcement litigation may be reduced and trespass cases be more quickly resolved.

In the meantime outstanding cases involving alleged trespasses should be settled or litigated expeditiously.

Uranium Trespass Claims

The Secretary of the Interior should be authorized to settle outstanding uranium trespass claims on an equitable basis; and the Attorney General should be directed to proceed with actions to recover damages to the United States, and he should be empowered to settle claims depending on the equities involved. There are a substantial number of outstanding trespass claims based on the production of uranium from invalid mining claims which was sold to the Atomic Energy Commission. The evidence appears conflicting whether this production was encouraged by responsible officials of the Commission. The uncertainties of this situation should be resolved expeditiously.

Boundary Determinations

Recommendation 112: An intensified survey program to locate and mark boundaries of all public lands based upon a system of priorities, over a period of years, should be undertaken as the public interest requires.

Boundaries of public lands in many areas remain unsurveyed. Erroneous or fraudulent early surveys, as well as impermanent survey makers, which can no longer be located, require substantial resurveys of public land boundaries. There are, for example, an estimated 272,000 miles of boundary between national forests and other ownerships. Of these, approximately 253,000 miles need to be established or reestablished. The magnitude of the problem is greater with respect to lands administered by the Bureau of Land Management.

The frequency and degree of unintentional trespass, including construction of buildings, would be substantially reduced by an intensified program to locate accurately and mark the boundaries of all public lands, thereby clearly identifying those lands which are federally owned. Adjacent owners would benefit from properly surveyed boundaries and greater certainty of title.

An intensified survey program would assist the Government in properly inventorying its lands. It would enable the Government to identify trespasses more rapidly and reduce trespass damages to Federal lands. Early action would reduce the likelihood of inequitable penalties against long-standing innocent, but unauthorized, occupancies.

While an expanded survey program would be expensive, such a program should, nevertheless, be undertaken to the extent possible. If appropriations are limited, then priority should be given to areas of substantial value and intensive public use.

Determination of Title Disputes

Recommendation 113: The doctrine of adverse possession[3] should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defend-

[3] Often loosely referred to as "squatter's rights," the doctrine permits one to establish title to another's land by taking actual possession of the land, usually under claim or color-of-title, and holding it for a required period of time.

ant. The defenses of equitable estoppel [4] and laches [5] should be available in a suit brought by the Government for the purpose of trying title to real property or for ejectment.

In cases where questions of adverse possession, equitable estoppel, and laches do not apply, persons who claim an interest in public land based upon good faith, undisturbed, unauthorized occupancy for a substantial period of time, should be afforded an opportunity to purchase or lease such lands.

Genuine disputes between the Government and its citizens over real property titles do exist. They may be occasioned by differing interpretations of factual data, differing opinions on the application of legal principles, or both.

Unless, however, the Government chooses to initiate litigation, it is virtually impossible for a private claimant to obtain a judicial resolution of title to lands which are claimed by the Federal Government. In any action brought against the Government to quiet title, *i.e.*, to establish who the owner is, the Government has available to it the defense of sovereign immunity which it invariably asserts.

The rule embodied in the defense of sovereign immunity is that the United States cannot be sued without its consent. It is an established legal doctrine of obscure origin. It has no constitutional or statutory basis and, while it has been said to be based upon the traditional immunity of the English Sovereign surviving by implication in Article III of the Constitution, as well as on the inability of the courts to enforce a judgment against the sovereign, the only respectable rationale for the doctrine acceptable to legal scholars is that the official actions of Government officials must be protected from interference by the judiciary.

In our opinion, this rationale, however, does not support the application of the doctrine as a defense in a suit whose only purpose is to determine the validity of the Government's claim to title to land. If the Government's claim is good, it will be established and, if the claim is not good, the Government cannot be harmed by a judicial determination to that effect, for it will lose nothing which rightfully belongs to it.

Furthermore, the Commission notes that as an historical matter, an apparent primary reason for reliance upon the doctrine of sovereign immunity in actions to try title to land claimed by the Government was the lack of manpower in Federal land managing agencies to make the investigations required to defend the Government's claim on its merits. While this may have been a valid basis for the use of the doctrine as an absolute defense in such actions during the 19th century, these managing agencies now appear to have sufficient manpower to effectively assert any meritorious defense which the Government may have to such a suit.

In suits brought by the United States against others to assert title to lands claimed by it, the defenses of laches and equitable estoppel are unavailable to the adverse claimant. This insulation stems from the legal contention that the Federal Government can never be bound by the unauthorized acts or assurances of its employees even when those mistakes are relied on by a citizen in good faith. These defenses are, however, available to the Government in consent suits brought against it.

Believing as we do, that it is not an undue interference with the functions of the Government to require it to defend its claim to real property in a proper suit, the Commission finds no valid reason for placing the Government in a more advantageous position in suits brought by it to establish such a claim.

Waiver of sovereign immunity in quiet title actions against the Government, and permitting the defenses of laches and equitable estoppel to be asserted in actions brought by the Government, would give no undue advantage to adverse claimants. They would be required to assert and prove their claims by competent evidence. The Government would not be required to surrender any of its property rights and would have all of the safeguards available to any litigant. Furthermore, laches and estoppel are equitable defenses. As the very terms imply, if permitted they could not be invoked to work an inequity against the Government as plaintiff in a proper action.

Certainty of title is to be desired. So long as disputed Federal claims to lands exist without final resolution, there can be no certainty of title. The Commission finds that the advantage of final determination of such claims under the accepted rules of real property law in courts of competent jurisdiction outweighs any claimed disadvantage to the Government.

The Commission also recommends that the doctrine of adverse possession be made applicable against the United States where land has been occupied in good faith. The principle that the United States cannot lose title to its lands by adverse possession by a private party is treated as axiomatic by the courts. This not only originated with the common law protection of the property of the sovereign,

[4] A defense based upon a false representation or concealment of material facts by the plaintiff which was relied upon by the defendant in acting or refraining from acting.

[5] Unreasonable delay, or the neglect to do something required by law, or to enforce a right at the proper time.

but flows from the exclusive powers of Congress under the property clause of the Constitution.[6]

In very limited circumstances Congress has consented to recognize good faith adverse possession against the Government, *e.g.,* the Mining Claim Occupancy Act,[7] the Color of Title Act,[8] and the Public Land Sale Act of 1968.[9] Furthermore, there has been a trend in principle for the sovereign to consent to suit in more situations.

As has been pointed out, private citizens do occupy public lands in technical trespass, but in good faith believe that the land is theirs. Often valuable improvements are placed upon such lands in ignorance of the Federal claim. Partly because of the protection the Government enjoys, including inapplicability of the doctrine of adverse possession, such occupancies, although known to the Government's agents, are sometimes permitted to exist until there is a Federal use for the lands. At other times they simply remain undiscovered until there is a Federal requirement for the lands.

It is not necessary that adverse possession be commenced with an intentional wrong. The doctrine also protects those who honestly enter and hold possession of land in full belief that it is their own. It is to the benefit of the latter group that the Commission's recommendation accrues. Thus, legislation extending the doctrine to Federal lands include strict requirements for a showing of good faith by the adverse claimant.

[6] Art. IV, § 3.

[7] 30 U.S.C. §§ 701–709 (1964), as amended, (Supp. IV, 1969).

[8] 43 U.S.C. §§ 1068–1068b (1964).

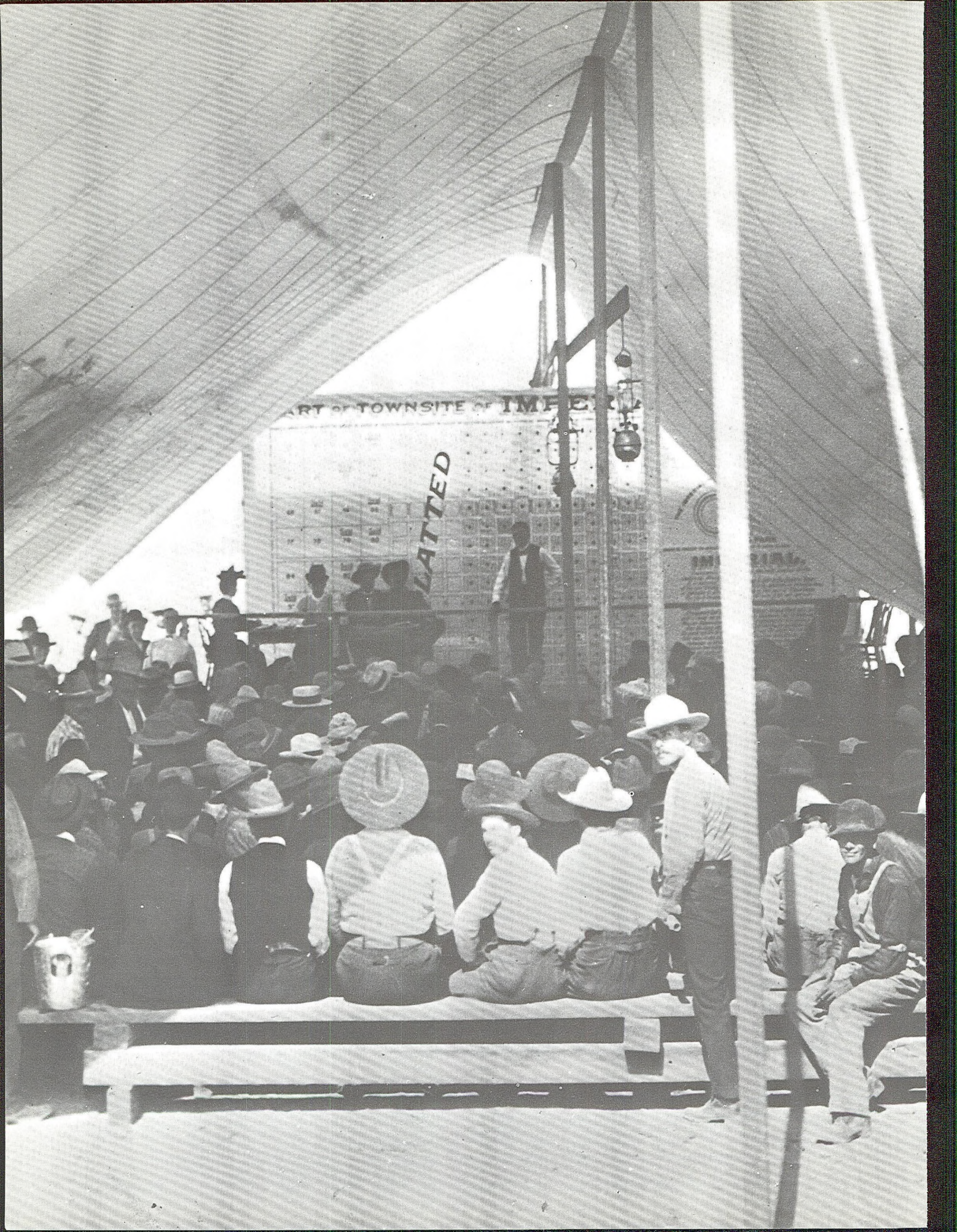
[9] 43 U.S.C. §§ 1431–1435 (Supp. IV, 1969).

Adverse possession is a creature of legislation, and its purpose is to quiet title to land. In this respect the Commission recommendation concerning its application is in keeping with other recommendations having as an objective the security of title and equitable treatment of private claimants to public lands.

Most state statutes permitting title to be established by adverse possession also permit "tacking." This is a doctrine that allows the adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous possession for the statutory period. *The Commission recommends that the doctrine of tacking be applicable to adverse possession of public lands where some form of privity between successive claimants can be shown and occupancy in good faith is established for the prescribed period.*

Legislation extending the doctrine of adverse possession to public lands should contain strict requirements as to the length of time occupancy must exist before the claimant is entitled to a judgment. Furthermore, the courts customarily are reluctant to accept the defenses of laches and equitable estoppel in the absence of strong supporting evidence.

These doctrines will be inapplicable in some cases even though there has been a substantial period of occupancy in good faith. In such cases, the Commission believes that it would be equitable to permit the purchase or lease of the disputed lands by the occupant. In fixing the purchase price or rental of the lands, such factors as the present market value of the unimproved land should be taken into consideration.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CHAPTER EIGHTEEN

Disposals, Acquisitions, and Exchanges

IN THE INDIVIDUAL commodity chapters of this report, we recommended the general guidelines for determining which public lands should be disposed of and which should be retained and managed under Federal ownership. In this chapter, we treat with the important tools and principles that apply to transfers of land out of Federal ownership, as well as with the general purposes and techniques which should govern the acquisition of privately owned lands in implementing public land programs. In addition, we treat independently with the land exchanges and appraisals, which are important aspects of both disposal and acquisition.

Disposal Techniques

Applicant Qualifications

Recommendation 114: Statutory eligibility qualifications of applicants for public lands subject to disposal should generally avoid artificial restraints and promote maximum competition for such lands. Preferences for certain classes of applicants should be used sparingly.

To implement this general principle and to promote the optimum allocation of public lands to their highest and best use, we recommend the elimination of restrictive qualifications or preferences which bar applicants because of their corporate nature, the size of their aggregate landholdings, or their previous purchases of public lands. There are two broad exceptions to this recommended general policy.

First, we would accord a preference in the sale of public land to those users who are dependent upon the land that is being disposed. Thus, for example, we recommend a preference in the sale of grazing lands to those permittees who own base properties which are dependent on such lands.

Second, in cases of competing applicants, we favor a statutory preference for state and local governmental units or nonprofit entities.

Congressional Review of Large Disposals

Recommendation 115: Disposals in excess of a specified dollar or acreage amount should require congressional authorization.

We recommend that Congress specifically authorize large-scale or high-value disposals, not because of our lack of confidence in Federal administrators in such situations, but because the magnitude of the disposal indicates that its impacts on the environment, regional economies, existing uses, etc., may be so substantial as to make legislative consideration appropriate. Congress should spell out the disposal acreage and dollar amounts above which its specific approval is to be obtained. This comports with our recommendation in Chapter Three that large-scale withdrawals also receive congressional approval.[1]

Antispeculation Restrictions

Recommendation 116: Where land is disposed of at less than fair-market value, or where it is desired to assure that lands be used for the purpose disposed of for a limited period to avoid undue speculation, transfers should provide for a possibility of reverter,

[1] Recommendation 8.

which should expire after a reasonable period of time.

We believe that implementation of our recommendation that public lands generally be disposed of at fair-market value will discourage undue speculation. However, we recognize that with increased competition for available lands, reasonable expectations of enhanced land values cannot, and perhaps should not, be discouraged. Nevertheless, with respect to the disposal of land for intensive agricultural or grazing purposes, the relatively low prices likely to be paid for such land may generate more than normal speculative interest. In such cases, *we recommend that disposals be on condition that the land be used for such purposes for a relatively short period of time, such as 5 years, subject to a possibility of reverter for breach of that requirement.*

As to lands transferred for less than fair-market value (generally transfers to state and local governmental units or non-profit entities performing quasi-governmental functions), *we recommend that such transfers be subject to the possibility of reverting to the United States for changes in specified uses, unless the grantee elects to pay the difference between the purchase price and the market value of the land if it is devoted to another use.* This possibility of reverter should be for a reasonable period of time, say 20 years.

Restrictions which run in perpetuity have resulted in an unnecessary rigidity in the use of the land and have prevented changes to higher and better uses made possible by new circumstances. They have also placed an unnecessary and continuing burden of enforcement on the Federal Government, which has often been unable to exercise such enforcement effectively, if at all.

Restrictions that apply only for a reasonable length of time should be adequate to prevent speculation or diversion of land uses detrimental to the public interest, while permitting local communities and states an opportunity to exercise continuing control over use changes by the adoption of suitable planning and zoning measures.

Pre-Disposal Conditions

Recommendation 117: Public lands generally should not be disposed of in an area unless adequate state or local zoning is in effect. In the absence of such zoning, and where disposal is otherwise desirable, covenants in Federal deeds should be used to protect public values.

As we point out in Chapter Three and elsewhere, we endorse the concept that the land use planning programs of the public land management agencies, including the strengthened withdrawal review program we recommend, should include a classification effort designed to identify those public lands that should be made available for disposal. While public lands should be classified as chiefly valuable for particular purposes and therefore subject to disposal, it is not intended that such classifications will generally impose restrictions on future use after disposal.

We endorse the general principle, contained in the temporary Public Land Sale Act of 1964,[2] which bars sales under that act until zoning regulations have been enacted by appropriate local authority, and recommend that it be extended generally to all Federal land disposals. This recognizes that control over uses of privately owned land is properly a state or local responsibility.

The response of state and local governments in adopting zoning regulations required by that Act generally has not been good. We, therefore, favor providing a specific time period within which the appropriate authorities must act. If they fail to, the Federal agencies should be authorized to make the requested disposal if it is otherwise appropriate. However, the agencies should be directed to include covenants in the patent, designed to serve the same protective function of the site and nearby land as state or local zoning. Of course, the views of state or local governmental authorities should be solicited and considered, even where no zoning has occurred. Such covenants should be terminated upon the adoption of adequate zoning regulations applicable to such lands by the appropriate authority.

Covenants Designed to Protect Federal Interests

Recommendation 118: Protective covenants should be included in Federal deeds to preserve important environmental values on public lands in certain situations, even where state or local zoning is in effect.

In addition to the use of covenants in Federal patents designed to protect important values in areas where state or local zoning has not yet been implemented, *we recommend the use of such covenants to protect important values on public lands in the vicinity of such disposals.* Proper use of land sold by the Federal Government is also a matter of environmental concern to Federal agencies with landholdings in the area. Thus, if disposals are made in areas adjacent to a unit of the National Park System, or an area which has been retained and set aside for another important public value (i.e., watershed protection or scenic preservation), the patents should

[2] 43 U.S.C. §§ 1421–1427 (1964), as amended, (Supp. IV, 1969).

contain restrictions on use, designed to protect such values. This practice should be employed without regard to whether state or local zoning regulations are in force.

Acquisition Techniques

The acquisition policies of the public land administering agencies are a vital part of their management programs. Acquisitions are the key to extension of the Federal public land programs, such as those of the National Park Service and the wildlife refuges, which do not depend for their implementation primarily on lands already in Federal ownership. They are also important management tools for agencies like the Forest Service and the Bureau of Land Management, whose primary responsibilities are confined largely to the efficient management of large land areas already in Federal ownership.

Consequently, the Commission has viewed land acquisition authority and practice from two principal viewpoints: (1) Whether such authority is adequate to accomplish basic missions of the agencies; and (2) whether there should be greater restraints on the *exercise* of such authority, however broad. The latter concern seems to stem from apprehension about further reduction of the state and local tax base in Federal land-impacted areas, and from fear that lands with significant economic potential might be taken in unreasonable amounts for other programs which might adversely affect the state and local economy.

In general, we conclude that: (1) The agencies' acquisition authority ought to be compatible with their basic missions, and adequate to help accomplish their efficient implementation; and (2) as a corollary, that there is need for better statutory guidelines and institutional arrangements to prevent unnecessary land acquisitions. Although our recommendations are framed generally with regard to the four agencies most concerned with the management of the resource values of the public lands—the Forest Service, National Park Service, Bureau of Land Management, and Bureau of Sport Fisheries and Wildlife—they appear equally well suited to acquisitions by the Bureau of Reclamation and the Corps of Engineers for water resource development projects.

Consistency of Acquisitions with Missions

Recommendation 119: The general acquisition authority of the public land management agencies should be consistent with agency missions.

Acquisition authority is granted to public land management agencies to help them implement their basic management responsibilities. But changes in these responsibilities over the years have not always been accompanied by changes in acquisition authority. For example, the basic National Forest purpose, under the 1897 Organic Act,[3] was keyed to timber production and to the improvement and protection of stream flows, but has since been expanded to the broad, multiple use program exemplified in the 1960 Multiple Use Act.[4] Yet, basic acquisition authority for the Forest Service remains the Weeks Act,[5] which was enacted in 1911 and is limited to the scope of Forest Service missions at that time. Under that authority, acquisitions may be made only of such lands as "may be necessary to the regulation of the flow of navigable streams or for the production of timber." The vast bulk of current Forest Service acquisition, however, are predominantly for recreation purposes. *Similarly, in light of the multiple use management authority that we recommend elsewhere for the Bureau of Land Management, its general acquisition authority should be broadened.* This recommended updating of the acquisition authority of those two agencies parallels recent similar action by Congress with respect to the National Park Service [6] and the Bureau of Sport Fisheries and Wildlife.[7]

While we favor a general clarification and broadening of the agencies' acquisition authority to make it compatible with their basic missions, *we recommend that the specific needs for which lands may be acquired by each public land agency be enumerated by statute.*

Revision of Acquisition Authority

Recommendation 120: The general land acquisition authority of the public land management agencies should be revised to provide uniformity and comprehensiveness with respect to (1) the interests in lands which may be acquired, and (2) the techniques available to acquire them.

Existing law provides uneven treatment of these two subjects with respect to particular agencies and among individual statutes governing particular acquisitions by a specific agency. Many statutes provide simply for acquisition of "lands or interests in lands" by the Secretary, which appears broad enough to include any kind of real property interests. However, other statutes specify particular interests, such as

[3] 16 U.S.C. § 475 (1964).
[4] 16 U.S.C. §§ 528–331 (1964).
[5] 16 U.S.C. §§ 480, 500, 513–519, 521, 552, 563 (1964).
[6] 16 U.S.C. §§ 460l–10a, 10b, 22 (Supp. V, 1970).
[7] 16 U.S.C. §§ 668bb, 668dd(b) (Supp. V, 1970).

less than fee interests like leases or scenic and flowage easements, giving rise to questions as to whether the general grants may be more limited than they appear on their face.

Similarly, the acquisition techniques available to particular agencies appear to vary. Although possible acquisition techniques available to the respective agencies encompass acceptance of donations, direct purchase, exchange, or condemnation, the statutes do not consistently enumerate all these techniques. For example, some statutes expressly confer the power of eminent domain, while others omit it or contain limitations on its use. Although the courts have ruled that condemnation is an implied adjunct to any general acquisition authority, even where it is not expressly mentioned, Congress should speak with clarity on such matters.

In order to provide the agencies with the full array of techniques necessary to carry out best their programs and to avoid confusion and uncertainty, *Congress should provide a general authority for each agency which includes all available acquisition techniques.* In those cases where Congress desires to make a particular technique unavailable to any agency, or limit its use (as in recent National Park System authorizations which prohibit condemnation of state lands without state consent), express provision for such exceptions should be made.

However, we see no reason why, generally, any public land management agency should be denied the use of particular acquisition techniques if they are to be used for purposes specified by statute as the interests in land the agency is authorized to acquire. *The most notable gap is Bureau of Land Management's lack of a general direct purchase authority, except for purposes of access and certain development roads and trails. It should be given such authority.*

The study prepared for the Commission [8] indicates that there are significant savings that can be achieved by purchasing less than fee interests. For example, the National Park Service reports that costs of scenic easements are running about 22 percent of the appraised value of the fee interest. Savings on flowage easements purchased by water development agencies are not as great, but are still substantial. However, even where direct savings are not great, the Federal Government is saved the costs of administering the area, which would be incurred with full ownership. Moreover, the lands remain on the local tax rolls, albeit at a reduced valuation, and where easements or agreements are obtained prohibiting conforming uses from being changed to degrade the recreation area atmosphere, residential and agricultural uses may be continued without detriment to the Federal program. Consequently, *we recommend that the agencies be encouraged to acquire less than fee interests wherever possible.* However, this practice should not be used oppressively to force an unwilling landowner to retain a limited interest in the land. *Similarly, the agencies should be encouraged to sell lands with appropriate restrictions where full ownership is not essential.*

[8] Charles F. Wheatley, Jr., *Land Acquisitions and Exchanges Related to Retention and Management or Disposition of the Federal Public Lands,* Ch. IV. PLLRC Study Report, 1970.

Escalating Land Costs

> Recommendation 121: The public land management agencies should be authorized to employ a broad array of acquisition techniques on an experimental basis in order to determine which appear best adapted to meeting the problem of price escalation of lands required for Federal programs.

The problem of escalating land costs has posed a serious obstacle to the implementation of authorized Federal programs involving land acquisition, particularly land for recreation uses. Its many ramifications and possible solutions are detailed in the Bureau of Outdoor Recreation's 1967 report, "Recreation Land Price Escalation." Several of the principal recommendations of that study were implemented by the 1968 amendments to the Land and Water Conservation Fund Act.[9] These amendments supplemented the Land and Water Conservation Fund with up to $200 million per year from Outer Continental Shelf leasing revenues for a limited period and authorized the use of several new acquisition techniques to help meet the problem: options, purchase and sale- or leaseback arrangements, and long-term deferred payment contractual commitments. That same year Congress employed the legislative taking technique recommended by the Bureau of Outdoor Recreation for portions of the Redwood National Park.[10] It is too soon to evaluate the efficacy of these steps to meet the price escalation problem. But we believe the departments should be armed with every tool that offers some hope of amelioration of the problem, so that they may be employed on an experimental basis and a report may be made to Congress in a specified period on the results. For example, the National Park Service has encountered some problems under the Redwood Park legislative taking provisions, indicating that this acquisition approach should be refined and generally reserved for special situations. Moreover, there appears to be no reason why the techniques made available to the Secretary of the Interior in 1968 for National Park System

[9] See note 6 supra and 16 U.S.C. § 4601–5(c) (Supp. V, 1970).

[10] 16 U.S.C. § 79c (Supp. V, 1970).

acquisitions ought not generally be available for all classes of land acquisition.

Acquisition Limitations

> Recommendation 122: Congress should specify the general program needs for which lands may be acquired by each public land agency.

There may well be reason to restrict further acquisition of lands for certain classes of Federal purposes. The addition of totally new units to the National Park System and the Migratory Bird Refuge System may be reasonably justified in furtherance of the national policies of preserving unique environments and antiquities and sustaining the North American migratory bird population. But a major enlargement of national forests or grazing districts under Bureau of Land Management administration through the acquisition of private land would not, in our view, further any contemporary national purpose. Although the national forests and the Taylor Act [11] grazing districts continue to serve a variety of local and national purposes, the original reasons for creating them have disappeared. Nor do we perceive any national purpose to be served by bringing vast new acreage under Federal ownership solely for "multiple use management." Consequently, authorizing acquisition for the general purpose of "multiple use" is undesirable.

We would not preclude further acquisition of lands by the Forest Service and Bureau of Land Management, but we recommend that Congress limit the purposes of such acquisition to inholdings, boundary, and other land tenure adjustments to facilitate better management of the units already established, and to acquire access to these properties. Authority for large-scale acquisitions of lands for such purposes as national recreation areas to be administered by the Forest Service, or perhaps the Bureau of Land Management, should be provided by congressional authorizations if they are considered desirable.

Generally, except for acquisition of inholdings, we do not support the concept of "blocking up" as a legitimate tenure-adjusting objective for the public land managing agencies. Solid ownership of a large area is not, in most cases, essential to effective use and management of component parts of it.

As a guideline for the application of limitations on inholding or boundary adjustment acquisitions suggested above, we believe only those tracts essential to management of the existing federally owned lands should be acquired. This would specifically preclude an unnecessary expansion of Federal holdings in localities where Federal ownership may be in the minority and in scattered tracts or checkerboard patterns.

Justification, Oversight, and State Coordination

> Recommendation 123: Justification standards for and oversight of public land acquisitions should be strengthened, and present statutory requirements for state consent to certain land acquisitions should be replaced with directives to engage in meaningful coordination of Federal acquisition programs with state and local governments.

As in the case of withdrawals and reservations, we feel there is a need to require a better showing by the agencies in justification of particular land acquisitions. A statutory requirement specifying the findings which an agency would have to make in support of a proposed acquisition would seem to pose no threat to necessary land acquisitions. Such requirements should include at least (1) the specific management need to be served (a general "multiple use" purpose would not be sufficient); (2) evidence that alternatives were either not available or had been considered and rejected; (3) the impact of the acquisition on existing uses of the land.

There are several different approaches to the question of approval of the acquisition of particular parcels by the various agencies. With respect to most units of the National Park System, Congress approves specific area boundaries within which the Secretary's acquisition authority may operate after the unit is authorized. The same is generally true of lands included within water resource development projects of the Bureau of Reclamation and the Corps of Engineers, which require specific congressional authorization. However, the acquisitions of the Forest Service, the Bureau of Sport Fisheries and Wildlife, and the Bureau of Land Management are not subject to such direct congressional legislative control. The approach to most Forest Service land purchases and Bureau of Sport Fisheries and Wildlife acquisitions for Migratory Bird Act Refuge additions is to require review and approval by the National Forest Reservation Commission and the Migratory Bird Conservation Commission, respectively.[12]

However, the Migratory Bird Conservation Commission does not review all Bureau of Sport Fisheries and Wildlife acquisitions, but only those for the Migratory Bird Refuge System. Similarly, public domain exchanges by the Forest Service and all Bureau of Sport Fisheries and Wildlife exchanges do not require approval of the commissions, even

[11] 43 U.S.C. § 315 et seq. (1964).

[12] Wheatley, n. 8 *supra*, at Chs. IIC, IID.

though they involve "acquisition" in exchange for Federal land. Bureau of Land Management exchanges are subject to no supervisory review outside the Department of the Interior. Finally, certain Forest Services and Bureau of Sport Fisheries and Wildlife acquisitions require state consent.

There are at least three reasons that have prompted Congress to employ these various devices to keep acquisitions within reason. They are to avoid unnecessary (1) reduction of the available tax base for state and local government; (2) preemption of lands suitable for generating economic activity for non-economic purposes (recreation areas, fish and wildlife refuges, etc.); (3) disruption of existing economic activity and dislocation of residents.

These three concerns are still with us, and were expressed at the public meetings and by some of our advisers. What appears to be needed is an effective institutional mechanism to exercise meaningful oversight over public land acquisitions under general legislative authority with stricter justification guidelines for such acquisitions.

Independent Agency Review

We have questions as to whether the National Forest Reservation Commission and the Migratory Bird Conservation Commission adequately serve the oversight role Congress intended for them. Although we gave careful consideration to whether a full time, independent, adequately staffed commission might better carry out this purpose, it is our conclusion that the stronger review function that we believe is needed does not justify a new independent agency solely for that purpose. However, the existing review mechanism ought to be broadened and strengthened.

State or Local Consent

Both the Weeks Act and the Migratory Bird Conservation Act require state consent to purchases by the Forest Service and the Bureau of Sport Fisheries and Wildlife under those acts.[13] Similarly, for a number of years Congress included provisions in annual appropriation acts requiring the consent of county governments to certain Forest Service acquisitions, but discontinued that practice after the controversy over the Sylvania Tract acquisition in Michigan by the Forest Service in the mid-1960's. No such state or local consent provisions are applicable to the Bureau of Land Management and National Park Service acquisitions.

We feel that such provisions are unnecessary and undesirable if the Federal agencies will coordinate their land use and acquisition planning more closely with state and local governments as part of the improved land use planning coordination we recommend elsewhere in this report.

One of the principal reasons underlying "consent" provisions is to afford the states and local governments some protection against undue depletion of their tax base. State and local governments have not hesitated to withhold their approval until favorable revenue sharing or payment-in-lieu-of-taxes arrangements or other concessions from Congress and the executive agencies could be assured.

Congress generally has been reluctant to grant the states veto powers with respect to Federal land and natural resource development, and many of our recommendations herein are in accord with that policy. If the Commission's recommendations for an equitable payment-in-lieu-of-taxes program are implemented, the most significant aspect of legitimate state and local concern over Federal land acquisition will be met. Consequently, all existing provisions permitting the states to veto land acquisitions for approved Federal programs should be repealed. Provision should be made for a hearing before the existing acquisition review boards upon petition by a state or local government unit in opposition to a particular acquisition.

Land Exchanges

Almost all Federal land management agencies have authority to make land exchanges, i.e., to dispose of public land under their jurisdiction in exchange for non-Federal land. It has been a useful management tool, and we favor its continued use. Our study has identified several problem areas, however, which should be remedied.

Use of Land Exchanges

> Recommendation 124: General land exchange authority should be used primarily to block up existing Federal holdings or to accomplish minor land tenure adjustments in the public interest, but not for acquisition of major new Federal units.

Congress should limit the use of general exchange authority to situations in aid of land management programs on existing Federal areas. Thus, while it should be available to acquire inholdings in existing national forests and units of the National Park System or national wildlife refuges, and to promote more efficient management of existing holdings, it should not be used to accomplish major new additions to those systems. Congress should specifically authorize

[13] 16 U.S.C. §§ 516, 715f (1964).

all major new acquisitions, including, if it wishes to do so, exchange authority for those situations.

Public Interest Test

Under existing law, informal negotiations usually preceed the filing of a formal application by a private party for a proposed land exchange. Where the agencies are eager to obtain the non-Federal land, the proposed transaction is usually determined to be in the public interest if all other conditions are satisfied. Where the non-Federal party, in pursuit of an objective of his own, is the moving force, however, the agencies seem prone to reject such proposals unless there is a clear benefit to a Federal program.

We believe that a broader "public interest" test should be applied uniformly in all situations. Hence, *we recommend that Congress express its sense that proposed exchanges ought to be accomplished where this can be done without detriment to Federal programs, or excessive cost.* We do not go so far as to require that all proposed exchanges be mandatory, inasmuch as we believe it is necessary for the Secretary to retain the discretionary authority to classify lands for retention and management under the conditions discussed elsewhere in this report. Indeed, we see no reason to exclude state exchanges from this authority, and we recommend that Congress make this point clear. This will require the repeal of the provision in section 8 of the Taylor Grazing Act which makes state exchanges mandatory.[14]

Exchange of Values

> Recommendation 125: Exchange authority of the public land management agencies should be made uniform to permit (1) the exchange of all classes of real property interests, and (2) cash equalization within percentage limits of the value of the transaction.

There is great disparity in the statutes as to the nature of the interests which the agencies may exchange. The Bureau of Land Management may exchange land estate only, although it may reserve minerals, easements, or other rights in the transferred lands. The Forest Service, on the other hand, may also exchange timber cutting rights from the National Forests; and the Bureau of Sport Fisheries and Wildlife may exchange any "products," including timber, from the National Wildlife Refuge System. For the National Park System, the 1968 amendments to the Land and Water Conservation Fund Act broadly authorize the Secretary to exchange "any federally-owned property or interest therein," excluding, however, "timber lands subject to harvest under a sustained yield program." [15]

There are similar differences in the nature of the property that the agencies may receive in exchange for Federal real property.

The public land management agencies should have authority to exchange not only lands, but also any interests therein. If not, agencies holding reserved mineral interests and easements or other use rights cannot, for example, dispose of or acquire such interests in an exchange transaction, even though it might be in the public interest to be able to do so.

Under Bureau of Land Management and Forest Service exchange authorities, the exchanged lands or interests must be of "approximately equal" value. The exchange authority for the Park Service and the Bureau of Sport Fisheries and Wildlife allows differences in values of the involved interests to be made up by cash payment by either party. Most other Federal agencies have similar authority.

The requirement to equate land values appears to be the primary cause of extensive delays in the consummation of Bureau of Land Management and Forest Service exchanges, as well as the reason for the failure to accomplish many otherwise desirable exchanges.

The lack of authority to equalize value differences with cash is particularly troublesome where community needs are involved, since public agencies seldom have an inventory of "trading stock" to effect the exchanges needed for community expansion. To tie the hands of the Forest Service and Bureau of Land Management in this regard frustrates a significant number of disposals of public land that would otherwise probably be made.

However, to the extent that cash may be used to provide the bulk of the consideration in an exchange, the transaction begins to lose the character of an exchange and becomes more like a direct sale or purchase. *Consequently, we recommend that there be a limitation on the amount of an exchange transaction that may be satisfied by cash, generally in the range of 25 percent.*

Lands Available for Exchange

> Recommendation 126: Generally, within each department, all federally owned lands otherwise available for disposal should be subject to exchange, regardless of agency jurisdiction and geographic limitation.

Perhaps the widest diversity among the various exchange laws relates to the classes and location of

[14] 43 U.S.C. § 315g (1964).

[15] Wheatley, n. 8 *supra*, at App. III, which is a comparative table supporting most of the discussion of statutory differences in connection with Recommendations 125 and 126.

public lands available for exchange. The Bureau of Land Management program authority is the narrowest, permitting only the exchange of unreserved public domain lands within the same state as those offered, or 50 miles into an adjacent state. With respect to the Bureau of Sport Fisheries and Wildlife on the other hand, the Secretary of the Interior may exchange acquired lands or public lands under his jurisdiction which he finds suitable for disposition without any geographic limitations. The Forest Service may exchange lands only within the national forests in the state where the acquired land is located.

The numerous statutes relating to the various units of the National Park System display the greatest variety of treatment, apparently the result of particular pressures applicable to a proposed park. For example, some statutes make any Federal land available for exchange, but require that it be in the state where the project is located. Others provide that any lands under the jurisdiction of the Secretary of the Interior may be exchanged, but vary with respect to whether the lands must be in the same state, the same or adjacent states, or anywhere in the nation. The general exchange authority for the National Park System enacted in 1968 authorized the Secretary to exchange "any federally-owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal and which is located in the same state as the non-Federal property to be acquired." [16]

The legislative history of most of the exchange acts indicates that a principal reason for geographic restrictions is to prevent the depletion of the tax base in one state for the benefit of the tax base and the economy in another. As in several other problem areas, implementation of the Commission's recommendation for a new payments-in-lieu-of-taxes system should eliminate this concern.

However, objections also have been made to disposal to private parties without giving the state and local governments an opportunity to assert their public needs, which might better be served either by transfer to those governmental entities or retention in Federal ownership. We believe that the improved planning procedures we recommend in Chapter Three, particularly those dealing with public participation, will largely take care of these objections.

The agencies are encouraged to place greater emphasis on public information practices and public participation where a large-scale exchange program involves substantial disposals in one state for the benefit of a Federal program in another state. The program of this kind carried out by Bureau of Land Management and the National Park Service, in connection with the proposed acquisition of land in California for the Point Reyes National Seashore in exchange for public lands in Nevada, is commended on this score. Public meetings or hearings in such cases should be made mandatory upon request of the state.

[16] 16 U.S.C. § 460l–22 (Supp. V, 1970).

Appraisals

All of the foregoing disposal, acquisition, and exchange transactions involve some estimate by the Federal Government of the value of the land involved—i.e., an "appraisal," whether formal or informal. We did not look into the broad question whether recognized appraisal principles are faulty. Our study was concerned generally with techniques and procedures, including the organizational structure and administrative procedures for the performance and review of appraisals, and whether statutory and administrative guidelines are adequate to assure that recognized appraisal procedures are utilized.

Formal Appraisal Not Always Required

> Recommendation 127: Public land administrators should be authorized by law to dispense with the requirement of a formal appraisal: (1) In any sale or lease where there is a formal finding that competition exists, the sale or lease will be held under competitive bidding procedures, and the property does not have a value in excess of some specified amount set forth in the statute; and (2) whenever property can be acquired for less than some specified price set forth in the statute, provided a formal finding is made that the property to be acquired has a value at least equal to the amount the government would be paying in either a direct purchase or exchange.

A formal appraisal need not be made in every instance when the United States seeks to obtain full or market value for land being disposed of, or to assure that it is getting fair value when it acquires land. There are a number of steps a land-managing agency may take in order to satisfy itself that it is obtaining full value in its land transactions, and a formal appraisal is only one possible procedure that may be adopted for this purpose. There are many instances where the cost of obtaining a formal appraisal will exceed the value of the property being disposed of or acquired. At best, formal appraisals are very time consuming exercises. Accordingly,

limited administrative flexibility must be provided in order to accelerate the disposal and acquisition processes and reduce their costs. However, we recognize that Federal officials occupy positions of public trust which require constant attention to the protection of the public's interest. Providing for formal findings will assure that there is a documented basis on which the formal appraisal is waived.

In those instances where the Commission recommends that the public lands and their resources be made available for less than full value, formal appraisal need be made only where price is to be determined in relationship to value.

Administration of Acquisition Programs

> Recommendation 128: Administration of all land acquisition programs for Department of the Interior agencies, including performance of the appraisal function, should be consolidated within the Department. Procedures, however, should be standardized for all public land management agencies.

We do not believe it necessary or feasible to centralize all Federal department and agency acquisition and appraisal programs in one place. But we believe that it is logical to consolidate such functions within the department having the largest public land management responsibilities; and that acquisition and appraisal *practices and procedures* should be standardized throughout all public land management agencies.

Consolidation

The problems and the personnel skills involved in the land acquisition and exchange programs of the four principal public land management agencies, i.e., Bureau of Land Management, National Park Service, Bureau of Sport Fisheries and Wildlife, and the Forest Service, are substantially identical. The Bureau of Reclamation may also be included in this group. Nevertheless, each agency pursues its own land acquisition program with its own staff. Significant economies and efficiency would likely be obtained by consolidation of the acquisition function within the Department.

As the lands administered by the Bureau of Land Management more and more become trading stock for acquisition programs of other Interior agencies, increasing problems of interagency coordination, duplication of effort, and program conflicts are arising. The Point Reyes National Seashore acquisition program illustrates this problem. Similarly, since most recent exchange statutes authorize the Secretary of the Interior to exchange *any* land under his jurisdiction, without regard to subsidiary agency jurisdiction, land acquisition is becoming more a department-wide concern than has been true historically.

We believe it is desirable to limit consolidation to the acquisition programs of the public land management agencies concerned with essentially "wild lands." Acquisition of developed lands and buildings, such as are carried out by the General Services Administration and, in some instances, the Corps of Engineers, is different enough to be left to the individual agencies or perhaps centralized elsewhere.

The consolidation of acquisition functions we recommend would not dilute the agencies' management responsibility. Determinations of land needs, in accordance with standards established by statute, would still reside with the management agencies. Only the actual acquisition process would be carried out by a central agency.

We view the appraisal function as an integral part of the acquisition procedure. It should, therefore, logically be placed organizationally in the same place. Further, centralization of the appraisal function would have the advantage of creating a single focal point to assure uniformity within the Department of the Interior and greater surveillance through exercise of the review function. It would also provide benefit to both the Government and employees in the development of career appraisers, thereby assuring greater continuity of expertise and incentive to the employees.

Inasmuch as the same personnel make appraisals for both acquisition and disposal, it is not intended to exclude appraisers for other purposes in the consolidated unit merely because we have joined the recommendation with the one for centralization of the acquisition function.

Standardization

Without going into the details of any particular proposal, we favor the enactment of legislation to establish uniform acquisition procedures, including uniform negotiating practices. Throughout our review and in this report we have had uppermost in our minds the need for Government to treat its citizens fairly. It is particularly appropriate here to express our view that representatives of the Government should never use their positions of power to take advantage of those with whom they have dealings. This is essential when they seek to negotiate the acquisition of land—whether it is through direct purchase, exchange, or in eminent domain proceedings.

The Commission endorses the efforts of the Department of Justice in organizing and conducting an Interagency Land Acquisition Conference in order to

obtain standardization and uniform acquisition and appraisal practices and procedures among the agencies within whatever statutory framework exists. The interdepartmental conference or committee should have representation from all public land management agencies. *We recommend the enlargement of this program and of the interagency conference to include standardization of appraisal procedures in connection with leases and disposals.*

We further recommend that, after agreeing on qualifications therefor, the committee should establish a register of appraisers qualified to appear in court as expert witnesses on behalf of the Government, and that thereafter all land management agencies utilize this list. As we envision the foregoing list, it would be used strictly within the Government and would identify different people as being qualified for different types of action.

Federal Legislative Jurisdiction

THE FEDERAL GOVERNMENT exercises exclusive governmental powers in the District of Columbia, and in more than 5,000 other places within the various states. They embrace almost six million acres of land, much of which is public land as defined in this Commission's Organic Act. Nearly one million people live in these areas and, together with millions of seasonal occupants and visitors, have a vital interest in the rules of law which govern them during their periods of residence or visitation on the public lands.

As detailed below, the Commission is concerned with this subject and about the lack of legal certainty regarding the rights of the people who inhabit or visit the public lands.

The "Jurisdiction Clause" of the Federal Constitution [1] provides that the Federal Government shall have exclusive jurisdiction over such area, not exceeding 10 miles square, as may become the seat of government, and similar authority over all places acquired by the Federal Government, with the consent of the state involved, for Federal works.

A Federal statute enacted in 1841 required states to consent to exclusive Federal legislative jurisdiction over properties acquired by the Federal Government on which it would place improvements.[2] Anxious to have Federal installations, such as post offices and arsenals within their boundaries, the state governments responded by enacting general consent statutes which were applicable to all land thereafter acquired by the Federal Government.

Through reservations in Statehood Acts and by outright cessions, the Federal Government has also acquired legislative jurisdiction over substantial acreages of public domain land to which the 1841 statute never applied. The Supreme Court held such reservations and cessions to be constitutional, even though they were not covered by the "Jurisdiction Clause." [3] There are in the National Park System, for instance, over 11 million acres of public domain land concerning which some legislative jurisdiction has been reserved in Statehood Acts or ceded by the states.

The courts held that the state consent statutes conferred a benefit upon the United States which was presumed to be accepted unless specifically rejected by legislative action, or otherwise. It was held that it was unnecessary for the United States to request exclusive jurisdiction in order to obtain it.[4]

Federal administrators were reluctant to suggest that the United States not accept exclusive jurisdiction over lands to which the state consent statutes were applicable. And, although most of the state consent statutes were amended over a period of time to provide for the reservation of some measure of jurisdiction, the result was that for a period of almost 100 years the United States obtained more than proprietorial jurisdiction over most of the lands acquired by it. At the same time, paradoxically, state jurisdiction continued to extend to the bulk of lands that had never left Federal ownership.

In 1940, the 1841 statute was amended by Congress to eliminate the presumption of Federal acceptance and to make acquisition of exclusive jurisdiction discretionary with Federal administrators.[5] The amendment served to retard the acquisition of exclusive jurisdiction by the Federal Government on acquired properties. But it did not entirely eliminate the practice, since some Federal administrators, perhaps from force of habit, failed to take affirmative

[1] Art. I, § 9.
[2] 40 U.S.C. § 255 (1964).
[3] Fort Leavenworth Railroad Co. v. Lowe, 114 U. S. 525 (1885).
[4] *Ibid.*
[5] 54 Stat. 19.

action to refuse to accept the jurisdiction which automatically attached under the state statutes.

As a result of acquisitions under the 1841 Act, the 1940 amendment, the status of public domain lands, and varied reservations by the states, there is now a hodgepodge of diverse shades of legislative jurisdiction over Federal lands. There have evolved four general categories of Federal jurisdiction:

1. *Exclusive*—the Federal Government possesses all of the authority of the state, the only reservation being the right of the state to serve criminal and civil process in the area for activities occurring outside the area;

2. *Concurrent*—the state grants to the Federal Government what would otherwise be exclusive jurisdiction, but reserves to itself the right to exercise concurrently the same powers;

3. *Partial*—the Federal Government has been granted the right to exercise certain of the state's authority, with the state reserving the right to exercise by itself, or concurrently, other authority beyond the mere right to serve process;

4. *Proprietorial*—the United States has acquired some right or title to an area within a state but no measure of the state's authority over the area.

Where there has been piecemeal acquisition, more than one category of jurisdiction may be applicable in the same area.

Two other provisions of the Constitution are germane to the power which the Federal Government may exercise over its lands, the "Property" and "Supremacy" clauses.[6]

While the Property Clause was originally thought to apply only to federally held lands outside the boundaries of any state, later judicial decisions leave no doubt that plenary authority is vested by this provision in Congress as to the protection, management, and disposition of Federal lands within the states.

The Constitution, laws of the United States, and treaties made under its authority are declared to be the supreme law of the land in the Supremacy Clause. Conflicting state law must yield to Federal law, and a state cannot interfere with an agency or instrumentality of the United States engaged in a lawfully authorized activity, without the consent of Congress.

Congress, therefore, is authorized to pass laws with respect to the administration of the property of the United States, and no state may interfere with the exercise of that power by the United States. The only limitations on this authority are those contained in the Bill of Rights.

[6] Art. IV, § 3; Art. VI.

A Jumbled Condition

Difficulty in determining the precise jurisdictional status of an area is one problem occasioned by the mixture of legislative authority applicable to Federal lands. Frequently this has resulted in accommodations between state and Federal entities which ignore the legal niceties created by Federal jurisdiction. If, for example, Federal law enforcement is not available, state and local police may well lend a hand. The dangers of these extra-legal arrangements are apparent.

Congress has provided a criminal code for Federal enclaves by adopting the laws of the host state for acts not otherwise punishable under Federal law.[7] Periodic changes in the state criminal code are made applicable to the Federal enclave. No similar civil law has been enacted for these areas, however, and to fill the vacuum the courts have applied a rule of international law. Thereby the civil law, in force in each area when Federal jurisdiction attached to it, has become the law for the area. Subsequent changes made in the host state law are inapplicable and, as a result, much of the civil law governing Federal enclaves is obsolete and archaic. Furthermore, under this rule the civil law for areas within the same state may vary to a marked degree.

An incident to the exercise of exclusive Federal legislative jurisdiction may be the denial to residents of a Federal enclave of many of the rights and privileges to which they would otherwise be entitled except for their place of residence.

It is settled, for example, that when a state chooses to do so, it may and does deny the right to vote to residents of a Federal enclave. Other important privileges may be denied, such as the right of children to attend local public schools, state supported welfare services, qualifications for access to the civil courts in domestic relations matters, and the right to be treated as residents of the state for such purposes as college scholarships or tuition, and hunting and fishing licenses.

And, although arrangements for such services are often made, in areas of exclusive Federal jurisdiction there is no obligation of the state to provide such governmental services as sewage disposal, trash removal, fire protection, and the like.

The jumbled condition of rights, privileges and obligations created by the confusion of jurisdiction over federally owned properties cannot be corrected under existing legislation.

Limitation on Exclusive Jurisdiction

Recommendation 129: Exclusive Federal legislative jurisdiction should be obtained, or

[7] 18 U.S.C. § 13 (1964).

[8] See, e.g., Herken v. Glynn, 151 Kan. 855, 101 P 2d 946 (1940).

retained, only in those uncommon instances where it is absolutely necessary to the Federal Government, and in such instances the United States should provide a statutory or regulatory code to govern the areas.

In many cases the Federal Government needs to have something more than a proprietorial jurisdiction over its properties. Generally, these are areas which, because of their immense size, large populations, remote locations, or peculiar use requirements, are beyond the capabilities of state and local governments to service. The seasonal demands of policing and servicing national park lands are one example.

On the other hand, many of the arguments advanced in favor of exclusive Federal jurisdiction fail, since the umbrella of constitutional immunity protects the Federal Government from state interference in carrying on its legitimate functions, including those of security.

For the most part, therefore, the Commission finds that, as to lands for which it has responsibility, there is little need for more than proprietorial jurisdiction in the Federal Government, and where any greater degree of jurisdiction does exist, unless a clear requirement for retention can be demonstrated, jurisdiction should be retroceded to the state.[9]

Despite the fact that the United States has some legislative jurisdiction over these large areas, it has failed to fulfill its responsibility and obligation to the people living in or visiting such areas.

Instead of tryng to establish and maintain a body of statute law governing the areas, we submit that where exclusive jurisdiction is required, Congress should provide the Federal management agency with the power, and impose the duty upon it, to establish the highest regulatory standards of those of the adjoining state in matters of health, safety, and similar activities.

Under existing law, local and state income, motor fuel, sales and uses taxes apply to businesses operating in areas over which the Federal Government has exclusive legislative jurisdiction.[10] However, state and local property taxes cannot be imposed in such areas even upon privately owned property.[11] Although the amount of privately owned personal property exempt from taxation varies from time to time and at most is sizable in only relatively few instances, *we recommend that provision be made to permit the imposition and collection of state and local property taxes in order to insure equal treatment for businesses operating within or outside of Federal enclaves in the same general region.*

Retrocession of Jurisdiction

Recommendation 130: Federal departments and agencies should have the authority to retrocede exclusive Federal legislative jurisdiction to the states, with the consent of the states.

There is no general statute authorizing retrocession of jurisdiction to the states, and in less than 40 instances in the history of the Nation has Congress enacted specific statutes of retrocession. Many of these have been in the last decade, as Federal administrators recognized the absence of need for Federal jurisdiction, or complex situations induced state officials to reassert jurisdiction. To implement the Commission's first recommendation, an orderly review of the jurisdictional status of all federally owned lands should be undertaken. Retrocession of jurisdiction should be accomplished as quickly as possible where indicated by such a review.

Obviously, to require legislation for each area where retrocession is desirable would impose an unnecessary burden upon Congress and result in undue delay. Therefore, in addition to requiring a review of all cases in which jurisdiction was ceded to the Federal Government, Congress should also authorize the land managing agencies to retrocede jurisdiction by administrative action.

The Commission is convinced that there would be no detriment to either the Federal Government or any of its citizens if such retrocessions were to occur, while at the same time there would be great benefits resulting from uniformity and efficiency.

[9] Similar recommendations were made by the Interdepartmental Committee for the Study of Jurisdiction over Federal Lands Within the States in their report of April, 1956.

[10] 4 U.S.C. §§ 104–106 (1964).

[11] Surplus Trading Co. v. Cook, 281 U. S. 647 (1930).

OFFICES
FOREST SERVICE
BUREAU OF
LAND MANAGEMENT
NATIONAL PARK
SERVICE
BUREAU OF
SPORT FISHERIES & WILDLIFE

Organization, Administration, and Budgeting Policy

THE HISTORY of public land programs, policies, and organizational structure has been a series of responses to changing social and political needs.[1]

The Ordinance of 1785 authorized the public land survey system which was to be the key to an orderly disposal program, but it was not until 1796 that Congress took positive action to implement the program by establishing the Office of Surveyor General in the Department of the Treasury.[2]

The first land offices were set up at Marietta, Chillicothe, Steubenville, and Cincinnati in 1800. Rising activity in land sales led to the creation of the General Land Office in the Treasury Department to assume the increasing volume of administrative action handled by the Secretary up to that time.

This established the basic organizational machinery that was to be responsible for the survey and disposal of a billion and a half acres of land through land offices and survey teams spread through 30 states. When the Department of the Interior was created in 1849 to administer the home affairs of the Nation, the General Land Office was transferred to the new Department and became its most important operating bureau.[3]

With the establishment of the national forest reserves at the end of the 19th century, their management was made the responsibility of the General Land Office. However, largely as the result of the efforts of Gifford Pinchot in the first great political conservation battle, the Bureau of Forestry in the Department of Agriculture, whose initial function was to encourage good forestry practices by private landowners and states, was re-designated as the Forest Service and assigned responsibility for management of the national forests in 1905.[4]

Until 1916, Yellowstone, Yosemite, Sequoia, Mesa Verde, and the other national parks were administered as independent units without a working organization at the national level to direct their operations and management. The 1916 Act created the National Park Service in the Department of the Interior to perform this function.[5]

The first wildlife refuge, on Pelican Island in Florida, was established in 1903, and its management was assigned to the Bureau of Biological Survey in the Department of Agriculture. After transfer of this function to the Department of the Interior in 1939,[6] the Fish and Wildlife Act of 1956[7] established the Bureau of Sport Fisheries and Wildlife, which is responsible for refuge management within the Fish and Wildlife Service.

The passage of the Taylor Grazing Act in 1934[8] initiated a new conservation era with respect to the remaining unappropriated, unreserved public domain lands. The Grazing Service was created to manage the grazing districts authorized under that act. The

[1] Paul Wallace Gates and Robert W. Swenson, *History of Public Land Law Development*, PLLRC Study Report, 1968.

[2] Act of May 18, 1796, 1 Stat. 464.

[3] Act of March 3, 1849, 9 Stat. 395.

[4] 16 U.S.C. § 472 (1964).

[5] 16 U.S.C. § 1 (1964).

[6] Reorg. Plan No. II, July 1, 1939, 5 U.S.C.A. app., p. 142 (1967).

[7] 16 U.S.C. § 742b (1964).

[8] 43 U.S.C. §§ 315 et seq. (1964).

General Land Office continued to have responsibility for the public domain lands, mostly in Alaska, that were not withdrawn from appropriation. Although by this time it was no longer doing "a land office business," the land office continued its responsibilities for surveying and disposing of the public domain lands until 1946,[9] when it was merged with the Grazing Service to form the present Bureau of Land Management.[10]

Some withdrawn public domain lands are, of course, administered by the Department of Defense, the Atomic Energy Commission, the Federal Power Commission, and other Federal agencies in support of their specific programs. The responsibilities of these agencies with respect to lands are relatively limited except as required for their missions. Accordingly major changes in their organizational structures are not warranted for this purpose. Nevertheless, the fact that each of them has a role in the administration of the public lands was a consideration in reviewing the structure and practices of the major public land agencies.

The Commission has found that the organization of public land programs is much more complex and confusing than is suggested by the existence of only four major public land bureaus.[11] The policies and practices of these agencies differ significantly in management programs affecting the same resources (*e.g.*, timber, forage, and recreation), requiring continuing efforts to achieve uniformity and promote the coordination of such programs. Their lands are intermingled and arrangements for coordinating their activities on the ground are not well structured. Responsibilities for some programs are divided among several agencies. Geographic boundaries of their regional organizations are different, and provisions for their coordinated administration and for working with states and local governments are piecemeal or nonexistent. Although the public land management agencies may find that they are able to adjust programs to minimize the impact of these problems on themselves, the Commission firmly believes that organization must be viewed in terms of how well it serves the public, rather than how well it serves the agencies.

[9] Reorg. Plan No. 3, July 16, 1946, 5 U.S.C.A. app., p. 185 (1967).

[10] This consolidation also included responsibilities for the administration of the Oregon and California revested lands and Coos Bay Wagon Road lands, whose administration had been placed in an office of the Director of Forests in the Department of the Interior in 1938. Paul Wallace Gates and Robert W. Swenson, *History of Public Land Law Development*, Ch. XX. PLLRC Study Report, 1968.

[11] The Forest Service; the Bureau of Land Management; the National Park Service; the Bureau of Sport Fisheries and Wildlife.

We believe that the following recommendations are essential for the successful implementation of the Commission's other recommendations for major changes in public land laws and policies.

A New Department of Natural Resources

> Recommendation 131: The Forest Service should be merged with the Department of the Interior into a new department of natural resources.

The Forest Service is the only major public land agency not now in the Department of the Interior. We believe the fact that the Forest Service is not under the same policy direction as the other public land agencies has led to unnecessary differences in policies between the Forest Service and bureaus within Interior; to conflicts between them, particularly over the use of national forest lands for national parks, that have been a source of embarrassment to national administrations; to confusion on the part of the using public; and to expensive duplication of staff, offices, programs, and facilities.

The original reasons for placing the administration of the national forests in the Department of Agriculture may have been sound. But the uses of the national forests have changed in recent years with increasing emphasis being placed on outdoor recreation and environmental quality. We think these changes justify separating the administration of the national forests from the farm enterprise orientation of the Department of Agriculture and placing it in a closer relationship to the public land functions of the Department of the Interior.

Since 1934, the programs of the Bureau of Land Management and the Forest Service have moved almost irresistably toward similar objectives for the management of comparable lands. The Multiple Use Acts of 1960 [12] for the Forest Service and 1964 for the Bureau of Land Management [13] underscore the reality of this development. Both the national forests and the Bureau of Land Management lands are managed for the same products and under similar multiple-use authorities.

Although there are still program differences between the two bureaus, caused in large part because of their historical development, the actual uses of these lands are almost identical. We see no differences in the timber that is harvested or the grass that is grazed on national forests or Bureau of Land Management lands.

[12] 16 U.S.C. §§ 528–531 (1964).

[13] 43 U.S.C. §§ 1411–1418 (1964), as amended, (Supp. IV, 1969).

In light of the Commission recommendations that a major part of the remaining unappropriated public domain lands be retained in Federal ownership, Forest Service programs should be under the same policy direction as the other major class of multiple-use lands.

Other aspects of public land administration also support this position. The Bureau of Land Management administers mineral and surveying programs on the national forests and, under present policies, the Secretary of the Interior is responsible for the operation of the withdrawals program on national forests reserved from the public domain. Direct program relationships such as these provide a strong rationale for merging the Forest Service with the Department of the Interior.

Another good reason for this merger is that the Forest Service would make a substantial contribution to Interior programs. Along with its outstanding skills in effective administrative management of a large institution involved in public land management, the Forest Service would bring a long history of research and cooperative programs with states and private landowners. Interior is not strong in either area in relation to public land programs.

The overall strength of the public land programs in the Department would be increased if it had a solid program in land management research. Elsewhere in this report we have recommended that research on environmental quality management of the public lands be intensified. The existing Forest Service research program, if merged with Department of the Interior public land programs, would be the logical place to assign these new research activities. In a similar manner, the cooperative forestry programs of the Forest Service could serve as a focal point for effecting the kind of cooperation with the states that the Commission recommends. For example, we have recommended that Congress provide financial assistance to public land states to aid in planning. The experience gained in cooperative forestry programs that have involved financial assistance to the states for forest fire control and forest management could be helpful in initiating a program of assistance in planning.

After the merger of the Forest Service with the Department of the Interior, *we recommend that the Secretary review public land programs of the Department and report to Congress on organizational consolidations that can be made for their administration.*

We have noted the many differences in policies and practices among public land programs and the inefficiencies that arise because of them. Merger of the Forest Service with the Department of the Interior opens the door to shifts in responsibilities within the new Department in the interest of greater program efficiency. For example, changes in management responsibility for some lands and the assignment of major responsibility for particular kinds of programs would be possible.

Many of the needed changes can be made by the Secretary of the new department, but some would require congressional action. In any case the Congress should be kept informed of proposed and actual changes because of its overall responsibility for the public lands. The Secretary should give particular attention to the opportunities for consolidating in a single bureau the management of lands not designated by law for a primary use. Such a consolidation would minimize the need for other adjustments in responsibilities such as the transfer of lands among agencies that is now needed to simplify land management.

The Secretary should also give consideration to providing to the greatest possible extent an organizational focus for public land programs within the new department. At the present time, in the Department of the Interior, responsibilities for public land programs are spread among three assistant secretaries. We believe that some consolidation is possible in the assignment of these responsibilities. Furthermore, responsibility for mineral programs is now scattered within the Department. In Chapter Eleven we recommend that programs for regulating activities on the Outer Continental Shelf be consolidated to the maximum extent feasible. Within the Department of the Interior, OCS minerals functions are now divided primarily between the Geological Survey, the Bureau of Land Management, and the Federal Water Pollution Control Administration. *Until such time as Outer Continental Shelf programs government-wide are consolidated in a single agency, we believe consideration should be given to consolidating existing Interior programs within the new department of natural resources.* This would bring together the responsibility for supervision of mineral production operation with those for mineral leasing and environmental management on the Shelf.

Policies and practices for the management and use of the public lands should generally be the same for all lands and agencies. We believe that, to the extent possible, the policies and practices guiding the management and use of commodities on the public lands and the administration of public land programs should be the same, regardless of the origin of the class of lands in Federal ownership or agencies involved. Throughout this report, we recommend changes in specific policies and practices that we think will make public land policy more consistent and relevant to modern conditions. Flexibility is important, of course, and the desire for consistency should not stand in the way of needed change. But

we see no reason why the best practices should not generally be adopted by all agencies.

The Bureau of the Budget has made strenuous efforts over the past years to have the different agencies adopt similar practices in selling public land timber. We commend these efforts, and others of a similar nature with respect to the public lands. The results of different practices are most confusing to the users of the public lands. We do not think people should be subjected to confusing differences that have no overriding reason to be maintained.

Regional Administration

Recommendation 132: Greater emphasis should be placed on regional administration of public land programs.

In the Chapter Three we recommend that comprehensive land use planning be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act. This reflects our conclusion that greater consideration must be given to regional and local impacts in the formulation of public land programs than is done at present.

Throughout its review, the Commission has noticed a tendency for each public land agency to manage its lands as though they were independent of other lands. Federal agencies conduct programs and make investments that sometimes duplicate those on other public lands nearby and, for that matter, some on state and local government or private lands. Coordination at the regional level among the public land agencies and between them and the non-Federal entities is necessary if the program duplication is to be minimized and programs run efficiently.

The regional commissions will provide coordination, but will have no authority to direct the course of Federal program actions. Even after implementation of our recommendation to merge the Forest Service with the Department of the Interior, there will be a need for regional administration of public land programs. Until that merger takes place, however, there is an even greater need for such regional administration. We recognize that after the merger there may be consolidations of public land management agencies, but this is uncertain.

We propose that, pending the merger recommended previously, there be increased joint action among all land management agencies. In addition, we recommend that the Secretary of the new Department consider organization changes that should be made to assure that public land programs reflect regional needs and relieve the individual citizen from having to work with several different land management agencies and remember their program differences and distinctions in their lands.

Pending the possibility of consolidation of agencies within the new Department, *we recommend that consideration be given by the Secretary to transferring lands among public land agencies wherever this can lead to a reduction in required facilities or would simplify the administration of public lands.* Greater consistency could also be provided in regional boundaries of the different public land agencies. This would not only simplify the coordinated planning process we are recommending, but could lead to opportunities for consolidating field offices and service functions. For example, specialized staffs for such functions as recreation planning or timber sales preparation could be used to service all public land agencies in a region. Certainly there should be no reason why at the regional and local level there should not be interchangeability of personnel performing common functions, primarily those of a staff or service nature, among the Bureau of Land Management, the Forest Service, the National Park Service, or the Bureau of Sport Fisheries and Wildlife.

Beyond these largely administrative changes, we propose that the Secretary give particular attention to the consolidation of public land functions at the regional level to achieve unification of program administration for all classes of public land within a region. This would also provide a single focal point for Federal representation in land use planning at the regional level. Such unification of public land programs would not lead to regional organizations that are wholly autonomous or independent of the national public land agencies. Nor would it eliminate the distinctions between classes of public lands. It would, however, provide for greater consistency among agencies in the regional application of public land policies.

Congressional Committee Consolidation

Recommendation 133: The recommended consolidation of public land programs should be accompanied by a consolidation of congressional committee jurisdiction over public land programs into a single committee in each House of Congress.

The existing divisions in congressional committee jurisdiction over public lands and other natural resource programs have their basis in distinctions between programs that were made long ago. The Commission's recommendations will go far toward eliminating many of these distinctions in the future. Therefore, *we believe it to be in the interest of good government to consolidate, to the extent possible,*

in a single committee in each House of the Congress jurisdiction over public land programs involving the major public land management agencies, i.e., the Bureau of Land Management, the Forest Service, the National Park Service, and the Bureau of Sport Fisheries and Wildlife. This recommendation of the Commission will not require a major overhaul of congressional operations and will help reduce the burden on Congress.

Fragmentation of Committee jurisdiction in Congress has, in our opinion, been a major cause of public land laws not being fully correlated with each other. The Nation cannot afford such fragmentation in the future.

Budgeting, Financing, and Pricing Policies

The key to having laws and policies operate effectively lies in the budgeting and appropriations process. Public land programs account for direct and indirect Federal expenditures of close to a billion dollars annually. The whole process, starting with budget formulation and ending with congressional appropriations, determines which programs are financed and which are not.

The procedure of developing an annual budget and obtaining appropriations to support Federal programs typically extends over about 18 months. It starts with broad planning guidelines supplied by the Bureau of the Budget and proceeds through the assembling of field estimates into bureau-level budgets, bureau budgets into departmental budgets, and those budgets into the President's budget. The latter budget is the basis for congressional appropriation hearings and actions which determine the amount of money that is spent on various programs.

Not all program funds come through the appropriation process. Because many public land programs are economic in character and result in substantial receipts, practices have developed in some cases for making funds available without going through the normal budgeting and appropriation process. Under the Knutson-Vandenberg Act, for example, timber operators can be required to pay for activities related to reforestation and improvement of sales areas.[14] These funds are spent by the Forest Service without going through the appropriation process. In a different sense, a considerable part of the national forest road system is built by loggers as a part of their agreement to purchase timber; this, too, amounts to program financing outside of the appropriation process.[15] The requirements placed on timber operators in both cases reduces the Federal receipts from timber sales that would otherwise go into the General Fund.

The various practices that have grown up around the budget and appropriation process are so complex as to defy a simple description. We do not believe that the whole process should be changed just to ease the problems we see with respect to public land programs. On the other hand, we think that some changes can be made in connection with public land budgets that will result in better allocations of Federal funds to public land programs and in more accountability for funds that are expended.

Consolidated Budget

Recommendation 134: The President's budget should include a consolidated budget for public land programs that shows the relationship between costs and benefits of each program.

At present, budgets for public land programs are scattered throughout the President's budget. The Forest Service budget appears as part of the Department of Agriculture's larger budget, while the budgets for other public land agencies appear as parts of the Department of the Interior budget. Even within that Department's budget, the Bureau of Land Management budget is separated from those of the National Park Service and the Bureau of Sport Fisheries and Wildlife. Within the budgets for each of these bureaus, the portion attributable to public land programs is often not identifiable.

We propose that the budgets for the major public land agencies be presented as a consolidated budget within the President's budget to facilitate comparisons among agency programs and to provide a basis for developing regional budget information for public land programs.

The present method of structuring the President's budget and compiling the budget estimates for public land programs almost assures that both similar programs in different agencies and different programs within an agency will be treated unevenly.

Timber management programs of the Forest Service, for example, are treated by the Bureau of the Budget as part of the Department of Agriculture budget, while timber management programs of the Bureau of Land Management are treated as part of the much smaller Department of the Interior budget. There is no point at which they are compared ex-

[14] 16 U.S.C. § 576b (1964).

[15] For example, in fiscal year 1968, direct appropriations for roads and trails on the national forests was $110 million. In that same year, an additional $17.6 million was appropriated from the roads and trails fund, which is made up of 10 percent of the receipts from national forest activities and timber purchaser built roads amounted to $69.3 million. George Banzhaf & Company, *Public Land Timber Policy,* App. E. PLLRC Study Report, 1969.

plicitly before becoming part of the President's budget.[16]

In addition, the present method leaves decisions of budget allocations among regions to the individual agencies. The President, through the Bureau of the Budget, and the Congress never have a real chance to consider regional allocations in the context of the budget process. We have found that there are great regional variations in what a dollar of Federal program expenditures will buy. We believe Congress should be given the specific opportunity to make choices on regional expenditures as part of the appropriation process.

Even within an agency budget, comparisons among programs are very difficult. The budgets do not present reliable information on investments and administrative expenditures on, for example, range management. And within that category, there is no satisfactory information for comparing various kinds of range management programs. This kind of information is being developed by the public land management agencies. Past research has provided a basic fund of knowledge for collecting information, while the recent efforts to develop program analyses have translated some of this information into meaningful framework for presenting budget information.

Improvements in the method of presenting budgets, so that the expected results of programs could be compared with the proposed costs, have long been recommended. This Commission believes it is time that this proposal be implemented for public land programs.[17]

We recognize that public land programs are only a small part of the whole budget. But these programs can be treated in a cost-benefit framework in the same way that proposals for major water development projects have been treated for years. Techniques and competence are available, and this is a good place to take the next step toward budgets designed for making decisions.

Periodic Program Authorization

Recommendation 135: Periodic regional public land programs should be authorized by statute as a basis for annual budgets and for appropriation of funds.

We find that generally there is no close relationship between the process of legislating substantive laws and approving appropriations to implement these laws. We do not believe that Congress should go back to having a number of standing legislative committees also responsible for appropriations, which was the case prior to 1920. But the authorization of periodic regional public land programs, based on comprehensive regional public land use plans would provide a guide to the Appropriations Committees; and would narrow the gap between program legislation and appropriations. It would require the President and the Congress to consider from time to time the full implications of regional programs and the relationship between program authorization and appropriations.

It would provide an opportunity for Congress to see how the public land policies provided by statute are applied to different kinds of public lands in different regions; to examine the flow of benefits that will be produced by a particular combination of planned land uses; and to determine whether the proposed levels and schedules of program financing are appropriate to the suggested plan of land use and development.

Although the workload would be heavy, *we believe that authorizing regional land use programs by statute on, say a 5- or 7-year basis would force the development and presentation of information that is not now available.* In fact, the budget process can be used as a key lever in forcing the development of such information.

Consistent standards for program evaluation should be established by statute. The requirement to use benefit-cost analysis and a specified interest rate in evaluating Federal water development projects is well established. Benefit-cost ratios as defined for water development projects may not be the best standards for use in evaluating public land programs. But this, or a similar, approach to establish standards should be adopted.

It is our conclusion that the public land agencies should start immediately to review the existing approaches that are being used in light of the kinds of programs on public lands. The agencies should then recommend the most appropriate approach to the Congress for consideration and possible inclusion in law.

Save where the Commission has made an exception, the earmarking of receipts for public land programs should be abolished. There are a number of program areas where receipts are automatically returned to the land management agencies for spending on specific programs. Included are the Forest Service roads and trails fund, the Knutson-Vandenberg fund for reforestation and, in effect, the Bureau of Land Management's range improvement funds. Congress

[16] We recognize that at a later date the Forest Service budget becomes part of the Interior and Related Agencies appropriation. Even then there is no attempt to compare the Forest Service and BLM programs; but our emphasis here is on the fact that there is no joinder that would permit comparison before the President's budget is submitted to the Congress.

[17] The budget analyses made in the public land agencies as part of the Planning, Programming, and Budgeting System have been useful in guiding program decisions, but have never been made available outside of the executive branch in support of budget requests.

can, and does, supplement these funds with direct appropriations. But the funds generated by these receipts are essentially free of congressional control.

We have recommended that receipts from timber sales, on lands classified for timber as the dominant use, be placed in a separate fund. But monies would not be available for spending until appropriated by the Congress.[18]

Except where special conditions warrant—and we believe this to be the case with respect to timber programs on timber dominant areas—the earmarking of receipts for financing particular governmental programs is not consistent with good governmental practices.

We also note that such earmarking after a few years usually results in either too much or too little money being available. Too much money often leads to needless expenditures of public funds in the hope that the level of earmarking will not be cut back in the future. And too little money may prevent the expenditure of needed funds on a program. We have also found that earmarking funds for one program may limit funds or expenditures in other areas.

Uniform Basis for Pricing

Recommendation 136: There should be a uniform, statutory basis for pricing goods and services furnished from the public lands.

A primary objective of our review has been to examine public land laws and policies for their consistency with each other. Where a principle is common to a number of different land uses or programs, we have attempted to determine whether there are differences in the basic premise applicable to this common area of policy from law to law and from one use to another; whether these differences, if they exist, are valid today and for the future; and what single or uniform premise, if appropriate, should be adopted.

Pricing—the charging and setting of fees for the use of various public lands goods and services, and for land itself—is a subject common to every area of public land use and management we have considered. But there is great diversity from law to law in the principles upon which pricing policies are based, as well as from agency to agency, among different uses and among different classes of public lands. Standards and methods for determining price levels are different, even where the principles may be identical. While specific pricing methods and policies have been considered in each of the chapters of this report dealing with a land use or commodity, it seems desirable to set forth the premises and standards which underlie our specific recommendations.

All those who use the public lands for any purpose should pay a fee for this privilege. There were valid reasons at various stages in the Nation's growth to grant privileges and to offer incentives in the form of price or fee subsidies to different classes of public land users. We believe those reasons have largely disappeared, or are outweighed by other considerations. The pressure to satisfy needs for every type of land use is increasing. Favored price treatment of any class of public land user is inequitable for other users and results in inefficient use of valuable resources.

The United States should obtain fair-market value for the goods and services it furnishes from all classes of public land. The national public, as owners in common of the public lands, and the United States as a landowner, have a legitimate right to this expectation. Substantial amounts of taxpayer dollars have been spent on the protection, development, and maintenance of public lands. We believe that payment of fair value for goods and services from the public lands is equitable to the taxpayers who have financed their administration and management.

We also believe that the best standard in a market economy for pricing goods and services from the public lands is the price that is set or would be set by the operation of market forces. Specifically, *we recommend that the standard adopted be fair-market value as that term is generally defined in common economic and legal usage.*

In practice, we believe this standard translates into variable prices for goods and services as market prices vary with local conditions. This means that national uniform fee schedules are not generally desirable for goods and services for which a market price otherwise exists. There has been a tendency, in the interest of simplicity of administration, to adopt uniform fee schedules for public land goods and services which vary widely in quality from place to place, even if a well established regional or local market price structure exists. This is undesirable. To the extent possible, therefore, *prices should be set by competitive methods for goods and services that have a market price structure. Where other aspects of policy do not permit the operation of market forces to establish price, minimum acceptable value to the United States should be determined by appraisal.* Competitive conditions do not always exist. The normal operation of the market will not, therefore, establish the price of a given transaction.

There are certain public land services, most notably outdoor recreation use of public lands, for which

[18] See recommendation in Chapter Five, Timber Resources.

well established market systems and prices do not exist. *As a result, prices for public land goods and services in this category must be uniform and be set at levels that do not discriminate against users in terms of their economic status and ability to pay.*

Generally, the cost of public land administration and management should not be used as the basis for determining price to be paid for public land goods and services. This standard has at times been used as the basis for pricing. Since the cost of processing a permit or lease bears no relation to the value received, it results in inequitable treatment of users and should not be used for price setting.

Deviations from fair-value return pricing objectives and equal treatment of all classes of users should be allowed only when explicitly authorized by statute. We believe the principles and guidelines offered above should, in the absence of statutory exception, be used by administrators in pricing public land goods and services. We have, elsewhere in this report, recommended deviations from these standards in some cases. However, such exceptions may involve the attainment of social and economic objectives unrelated to public land administration and must be carefully enunciated. The value judgments inherent in such deviations must be arrived at through the legislative process.

We recommend that there be statutory guidelines adopted for deviations from the market-pricing standards, which we think should include, as a minimum, the following:

1. Free use of public land and its resources should be allowed only in circumstances where the value of goods received is clearly less than the administrative cost of collecting the charge and such use is deemed appropriate as a means of promoting another objective of national policy.
2. Prices for public lands conveyed or made available only for public purposes, to states, local government, other public and quasi-public entities, and nonprofit organizations should be at less than full-market value.

Citizen Advisory Boards

Recommendation 137: Statutory authority should be provided for public land citizen advisory boards and guidelines for their operation should be established by statute.

Advisory boards have been used in public land matters for years. After the Taylor Grazing Act [19] was passed in 1934 to regulate grazing on the public domain, an amendment to that act established district citizen boards made up of ranchers to develop the regulations for using the public range.[20] From that time on, the boards were to be consulted on all grazing matters. The Forest Service has had grazing boards authorized by statute since 1950.[21] These boards are much like the Taylor Act district boards. With a few limited exceptions, the other advisory boards for public land agencies have been established administratively. There are numerous national forest multiple-use boards, and the Bureau of Land Management has multiple-use boards for each of its state offices.[22]

We recognize that citizen participation in an advisory role is necessary to the smooth functioning of public land programs. The individual citizen, brought into a continuing and formal contact with public land administrators as a member of a citizens advisory board, can serve the goals of good government in a number of ways. He can advise on policy matters, on continuing programs and land use plans, and on specific problems that arise from time to time. Administrators also use advisory boards as a means of testing ideas before implementing them, and as a means of communicating their ideas and proposals to the public. Citizen advisory boards can truly serve as two-way channels of communication.

We note that there are some disadvantages to the use of advisory boards. It has been alleged that advisory boards in some cases have "controlled" Federal programs on the public lands. And advisory board meetings can impose a real burden on the limited time of both members and administrators. We believe that the advantages of citizen advisory boards outweigh the possible disadvantages, but that some controls on the operation of such boards are necessary. To give advisory boards the stature and role that they deserve, we propose that the public land management agencies be given clear statutory authority to use them at all levels. We recommend that they be established in all instances where they can make a contribution. In Chapter Sixteen we recommend use of boards at the national policy making level. In addition, Congress should specify any other boards that would be required and allow the departments and agencies discretion in establishing others. All advisory boards would be controlled by the provisions of the statute authorizing use of the boards.

Once established, the advisory boards should be utilized by public land agencies as frequently as may be necessary to fulfill their functions. If an advisory board is not going to be used, it should be disbanded or, if established by statute, its abolition recommended to the Congress. In this connection, we note that the National Advisory Board Council, estab-

[19] n. 8, supra.

[20] 43 U.S.C. § 315o–1 (1964).

[21] 16 U.S.C. § 580k (1964).

[22] Commission staff with consultants, *Organization, Administration, and Budgetary Policy.* PLLRC Study Report, 1970.

lished administratively to advise on the administration of Bureau of Land Management lands, has not met since December 1968. Although we recognize that major changes in policy, other than those of an emergency or urgent nature, generally have been deferred until the recommendations of this Commission could be reviewed, there are many aspects of the on-going programs of the Bureau of Land Management that could have been discussed with the National Advisory Board Council if it is to remain a vital element in the administration of the public lands.

We see the fundamental problem in the use of advisory boards as being one of a lack of a clearly defined and appropriately limited function. An Executive order,[23] issued in 1962, now provides guidelines for the operation of advisory boards and places limits on their functions. This Executive order gives the Federal agencies clear control over the operation of the boards. *We believe that Congress should set forth in law a clear expression of congressional intent with respect to the purpose, composition, and operation of citizen boards for public land matters.*

[23] Exec. Order No. 11007, February 26, 1962, 3 C.F.R. 1959–1963 Comp., p. 573.

To be consistent with the broad roles of the public land agencies, we recommend that members of each citizen advisory board be chosen to represent a broad range of interests. One of the chief charges levied against advisory boards is that they tend to be dominated by members representing only one or two limited interests or uses, even though many uses of the land may actually be affected by recommendations of the board. These charges have been aimed mainly at the district grazing advisory boards, whose membership is limited by statute primarily to grazing permittees.

The growing recognition that public lands can serve a variety of uses provides a basis for our conclusion that membership on advisory boards should be chosen to represent a range of interests, and that representation should change as interest in, and uses of, the lands change. We believe the appropriate range of representation includes not just the obvious direct interests, such as grazing, recreation, mining, fish and wildlife, and wilderness, but the professor, the laborer, the townsman, the environmentalist and the poet as well.

The Commission's Organic Act

Public Law 88-606
88th Congress, H. R. 8070
September 19, 1964

An Act

78 STAT. 982.

For the establishment of a Public Land Law Review Commission to study existing laws and procedures relating to the administration of the public lands of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

DECLARATION OF POLICY

SECTION 1. It is hereby declared to be the policy of Congress that the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public.

Public Land Law Review Commission. Establishment.

DECLARATION OF PURPOSE

SEC. 2. Because the public land laws of the United States have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other and because those laws, or some of them, may be inadequate to meet the current and future needs of the American people and because administration of the public lands and the laws relating thereto has been divided among several agencies of the Federal Government, it is necessary to have a comprehensive review of those laws and the rules and regulations promulgated thereunder and to determine whether and to what extent revisions thereof are necessary.

COMMISSION ON PUBLIC LAND LAW REVIEW

SEC. 3. (a) For the purpose of carrying out the policy and purpose set forth in sections 1 and 2 of this Act, there is hereby established a commission to be known as the Public Land Law Review Commission, hereinafter referred to as "the Commission."

Composition.

(b) The Commission shall be composed of nineteen members, as follows:

(i) Three majority and three minority members of the Senate Committee on Interior and Insular Affairs to be appointed by the President of the Senate;

(ii) Three majority and three minority members of the House Committee on Interior and Insular Affairs to be appointed by the Speaker of the House of Representatives;

(iii) Six persons to be appointed by the President of the United States from among persons who at the time appointment is to be made hereunder are not, and within a period of one year immediately preceding that time have not been, officers or employees of the United States; but, the foregoing or any other provision of law notwithstanding, there may be appointed, under this paragraph, any person who is retained, designated, appointed, or employed by any instrumentality of the executive branch of the Government or by any independent agency of the United States to perform, with or without compensation, temporary duties on either a full-time or intermittent basis for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days; and

(iv) One person, elected by majority vote of the other eighteen, who shall be the Chairman of the Commission.

Chairman.

50-081 O

Vacancies.

(c) Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made.

(d) The organization meeting of the Commission shall be held at such time and place as may be specified in a call issued jointly by the senior member appointed by the President of the Senate and the senior member appointed by the Speaker of the House of Representatives.

(e) Ten members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

(f) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(g) The members appointed by the President shall each receive $50 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

DUTIES OF THE COMMISSION

SEC. 4. (a) The Commission shall (i) study existing statutes and regulations governing the retention, management, and disposition of the public lands; (ii) review the policies and practices of the Federal agencies charged with administrative jurisdiction over such lands insofar as such policies and practices relate to the retention, management, and disposition of those lands; (iii) compile data necessary to understand and determine the various demands on the public lands which now exist and which are likely to exist within the foreseeable future; and (iv) recommend such modifications in existing laws, regulations, policies, and practices as will, in the judgment of the Commission, best serve to carry out the policy set forth in section 1 of this Act.

Report to President and Congress.

(b) The Commission shall, not later than December 31, 1968, submit to the President and the Congress its final report. It shall cease to exist six months after submission of said report or on June 30, 1969, whichever is earlier. All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the Archives of the United States.

DEPARTMENTAL LIAISON OFFICERS

SEC. 5. The Chairman of the Commission shall request the head of each Federal department or independent agency which has an interest in or responsibility with respect to the retention, management, or disposition of the public lands to appoint, and the head of such department or agency shall appoint, a liaison officer who shall work closely with the Commission and its staff in matters pertaining to this Act.

ADVISORY COUNCIL

SEC. 6. (a) There is hereby established an Advisory Council, which shall consist of the liaison officers appointed under section 5 of this Act, together with 25 additional members appointed by the Commission who shall be representative of the various major citizens' groups interested in problems relating to the retention, management, and disposition of the public lands, including the following: Organizations representative of State and local government, private organizations working in the field of public land management and outdoor recreation resources and opportunities, landowners, forestry interests, livestock

interests, mining interests, oil and gas interests, commercial and sport fishing interests, commercial outdoor recreation interests, industry, education, labor, and public utilities. Any vacancy occurring on the Advisory Council shall be filled in the same manner as the original appointment.

(b) The Advisory Council shall advise and counsel the Commission concerning matters within the jurisdiction of the Commission.

(c) Members of the Advisory Council shall serve without compensation, but shall be entitled to reimbursement for actual travel and subsistence expenses incurred in attending meetings of the Council called or approved by the Chairman of the Commission or in carrying out duties assigned by the Chairman.

(d) The Chairman of the Commission shall call an organization meeting of the Advisory Council as soon as practicable, a meeting of such council each six months thereafter, and a final meeting prior to approval of the final report by the Commission.

GOVERNORS' REPRESENTATIVES

SEC. 7. The Chairman of the Commission shall invite the Governor of each State to designate a representative to work closely with the Commission and its staff and with the advisory council in matters pertaining to this Act.

POWERS OF THE COMMISSION

SEC. 8. (a) The Commission or, on authorization of the Commission, any committee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued only on the authority of the Commission and shall be served by anyone designated by the Chairman of the Commission.

The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matters which would require the presence of the parties subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or transacts business.

A witness may submit material on a confidential basis for the use of the Commission and, if so submitted, the Commission shall not make the material public. The provisions of sections 102–104, inclusive, of the Revised Statutes (2 U.S.C. 192–194) shall apply in case of any failure of any witness to comply with any subpena or testimony when summoned under this section.

(b) The Commission is authorized to secure from any department, agency, or individual instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this Act and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission upon request made by the Chairman or the Vice Chairman when acting as Chairman.

(c) If the Commission requires of any witness or of any governmental agency production of any materials which have theretofore been submitted to a government agency on a confidential basis, and the confidentiality of those materials is protected by statute, the material so produced shall be held confidential by the Commission.

APPROPRIATIONS, EXPENSES, AND PERSONNEL

SEC. 9. (a) There are hereby authorized to be appropriated such sums, but not more than $4,000,000, as may be necessary to carry out the provisions of this Act and such moneys as may be appropriated shall be available to the Commission until expended.

5 USC 1071 note. Ante, p. 400.

(b) The Commission is authorized, without regard to the civil service laws and regulations and without regard to the Classification Act of 1949, as amended, to fix the compensation of its Chairman and appoint and fix the compensation of its staff director, and such additional personnel as may be necessary to enable it to carry out its functions except that any Federal employees subject to the civil service laws and regulations who may be employed by the Commission shall retain civil service status without interruption or loss of status or privilege.

(c) The Commission is authorized to enter into contracts or agreements for studies and surveys with public and private organizations and, if necessary, to transfer funds to Federal agencies from sums appropriated pursuant to this Act to carry out such aspects of the review as the Commission determines can best be carried out in that manner.

(d) Service of an individual as a member of the Advisory Council, as the representative of a Governor, or employment by the Commission of an attorney or expert in any job or professional field on a part-time or full-time basis with or without compensation shall not be considered as service or employment bringing such individuals within the provisions of the Act of October 23, 1962 (76 Stat. 1119).

18 USC 201 et seq.

DEFINITION OF "PUBLIC LANDS"

SEC. 10. As used in this Act, the term "public lands" includes (a) the public domain of the United States, (b) reservations, other than Indian reservations, created from the public domain, (c) lands permanently or temporarily withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws, including the mining laws, (d) outstanding interests of the United States in lands patented, conveyed in fee or otherwise, under the public land laws, (e) national forests, (f) wildlife refuges and ranges, and (g) the surface and subsurface resources of all such lands, including the disposition or restriction on disposition of the mineral resources in lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf.

Approved September 19, 1964.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1008 (Comm. on Interior & Insular Affairs).
SENATE REPORT No. 1444 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 110 (1964):
Mar. 10: Considered and passed House.
Sept. 3: Considered and passed Senate, amended.
Sept. 4: House agreed to Senate amendments.

Public Law 90-213
90th Congress, H. R. 12121
December 18, 1967

An Act

81 STAT. 660

To amend the Act of September 19, 1964 (78 Stat. 983), establishing the Public Land Law Review Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of September 19, 1964 (78 Stat. 983), establishing the Public Land Law Review Commission is amended—

Public Land Law Review Commission.

(1) by striking, in section 4(b), "December 31, 1968" and substituting therefor "June 30, 1970".

Extension.

(2) by striking, in section 4(b) "June 30, 1969" and substituting therefor "December 31, 1970".

Appropriation increase.

78 Stat. 983.

(3) by striking, in section 9(a), "$4,000,000" and substituting therefor "$7,390,000".

43 USC 1394.

43 USC 1399.

(4) by substituting for the present text of the first sentence of section 8(a) the following: "The Commission or, on authorization of the Commission, any committee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings, take testimony or receive evidence under oath, and sit and act at such times and places as the Commission or such authorized committee may deem advisable. The member of the Commission presiding at any such hearing is authorized to administer the oath to witnesses."

43 USC 1398.

SEC. 2. Section 8 of the Act of September 19, 1964 (78 Stat. 986), is amended to read as follows:

43 USC 1418.

"SEC. 8. The authorizations and requirements of this Act shall expire six months after the final report of the Public Land Law Review Commission has been submitted to Congress, except that any segregation prior to such time of any public lands from settlement, location, sale, selection, entry, lease, or other form of disposal under the public land laws shall continue for the period of time allowed by this Act."

SEC. 3. Section 7 of the Act of September 19, 1964 (78 Stat. 988), is amended to read as follows:

43 USC 1417.

"SEC. 7. The authority granted by this Act shall expire six months after the final report of the Public Land Law Review Commission has been submitted to Congress, except that sales concerning which notice has been given in accordance with section 3 hereof prior to such time may be consummated and patents issued in connection therewith after such time."

Approved December 18, 1967.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 561 (Comm. on Interior & Insular Affairs).
SENATE REPORT No. 820 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 113 (1967):
Aug. 21: Considered and passed House.
Nov. 30: Considered and passed Senate, amended.
Dec. 6: House concurred in Senate amendment.

PUBLIC LAND LAW REVIEW COMMISSION
September 1969

TOP ROW LEFT TO RIGHT: **Fannin,** Arizona; **Rockefeller,** New York; **Allott,** Colorado; **Vice Chairman Mock,** Utah; **Chairman Aspinall,** Colorado; **Anderson,** New Mexico; **Bible,** Nevada; **Baring,** Nevada; **Kyl,** Iowa.
BOTTOM ROW LEFT TO RIGHT: **Director Pearl; Taylor,** North Carolina; **Burton,** Utah; **Mrs. Smith,** California; **Clark,** Arizona; **Udall,** Arizona; **Jordan,** Idaho; **Goddard,** Pennsylvania.
MEMBERS ABSENT: **Hoff,** Vermont; **Jackson,** Washington; **Saylor,** Pennsylvania.

The Commission

Following its organizational meeting July 14, 1965, the Commission next met on August 18, 1965, at which time it appointed the 25 members to be selected by it for membership on the Advisory Council. The Commission met again—March 24, 1966—for the organization meeting of the Advisory Council. The Governors' Representatives participated in the meeting. All of these meetings were held in Washington, D.C.

As part of the factfinding process, a series of meetings was held to obtain the views of interested persons and groups.[1] In conjunction with some of the meetings at which testimony was taken, the Commission also had business sessions, some with the Advisory Council and some in executive session.

In addition to the 10 regional meetings at which testimony was taken, the Commission met 27 times for a total of 37 meetings, of which the Advisory Council and Governors' Representatives participated in 24. All meetings of the Advisory Council with the Governors' Representatives participating were open to the public.[2] The Commission met a total of 102 days, of which 33 days were devoted to taking testimony.

The members of the Commission are:

CHAIRMAN: WAYNE NORVIEL ASPINALL, Colorado. Chairman, Committee on Interior and Insular Affairs, House of Representatives since 1960; Member House of Representatives since 1949. A.B. University of Denver, 1919; LL.B. Denver Law School, 1925; School teacher, President School Board, and Member of Town of Palisades Board of Trustees, 1919–34; Colorado House of Representatives, 1931–38, Colorado State Senate, 1939–48. Alumnus member, Phi Beta Kappa, 1968.

Appointed by the President:

ROBERT EMMET CLARK, Professor of Law, University of Arizona. B.A. University of New Mexico, 1944; LL.B. University of Arizona, 1946; S.J.D. Yale University, 1960. Sterling Fellow, Yale Law School, 1955–56; Ford Foundation Law Fellow, 1961–62 (Middle East and Europe); Fulbright-Hayes award for Spain, 1966–67. Member of the National Advisory Council for the Natural Resources Journal.

MAURICE K. GODDARD, Secretary of Forests and Waters, Commonwealth of Pennsylvania since 1955; Chairman Pennsylvania State Water and Power Resources Board. B.S. University of Maine, 1935; M.S. University of California, 1938; D.Sci. (Hon.) Waynesburg College, 1959; D.Sci. (Hon.) University of Maine, 1966. Instructor, Pennsylvania State College, 1935; Director, Mont Alto Branch School of Forestry from 1946; named Director, School of Forestry, 1952. Former member Federal Water Pollution Control Advisory Board.

PHILIP H. HOFF, Attorney, Burlington, Vermont; Governor Vermont, 1963–69. A.B. Williams College, 1948; LL.B. Cornell University, 1951. Member, Vermont General Assembly, 1961–63. Director, Vermont Children's Aid Society and Greater Burlington Industrial Corporation.

VICE CHAIRMAN: H. BYRON MOCK, Attorney, Salt Lake City, Utah. A.B. University of Arizona, 1933; LL.B. Georgetown University, 1939. Employed successively with Congresswoman Greenway, Works Project Administration, and President's Advisory Commission on Education, 1934–39; Assistant Solicitor, Department of the Interior, 1939–41; Chief Counsel, U.S. Grazing Service, 1941–42; Regional Administrator, 1947–54, and Area Administrator, 1954–55, Bureau of Land Management.

LAURANCE S. ROCKEFELLER, Chairman, Rockefeller Brothers Fund, Inc., New York City. A.B. Princeton University, 1932. Chairman, Outdoor Recreation Resources Review Commission; Chairman, White House Conference on Natural Beauty, 1965; Chairman, Citizens Advisory Committee on Natural Beauty; Chairman, Advisory Committee on Environmental Quality; Member of the Board, National Park Foundation; Chairman, New York State Council of Parks.

NANCY E. SMITH, County Supervisor, San Bernardino County, California, since 1956 and former Chairman of the Board; former President of the County Supervisors Association of California. Attended Chicago Teachers College and University of Southern California. Served on the California State Welfare Commission; Member of Santa Ana Regional Water Pollution Control Board.

[1] See Attachment No. 3, Appendix D.

[2] The record of attendance of the members of the Commission and Advisory Council is part of the Commission file with the minutes of the meetings which will be deposited with the National Archives.

Appointed by the President of the Senate:

(All are members of the Committee on Interior and Insular Affairs)

GORDON L. ALLOTT, Colorado. Member United States Senate since 1955. A.B. University of Colorado, 1927; LL.B. 1929. Lieutenant Governor, Colorado, 1950–54; County attorney, Prowers County, 1934 and 1940–46; District attorney, 1946–48. United States Congressional Representative to United Nations, 1962.

CLINTON P. ANDERSON, New Mexico. Member, United States Senate since 1949; Chairman, Committee on Aeronautical and Space Sciences; Chairman, Subcommittee on Water and Power Resources and former Chairman, Committee on Interior and Insular Affairs. Member, House of Representatives, 1941–45; Secretary of Agriculture, 1945–48; Executive Director, New Mexico Unemployment Compensation Commission, 1936–38; Treasurer, State of New Mexico, 1933–34.

ALAN BIBLE, Nevada. Member, United States Senate since 1954. Chairman, Subcommittee on Interior and Related Agencies Appropriations; Chairman, Subcommittee on Parks and Recreation and former Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs. A.B. University of Nevada, 1930; LL.B. Georgetown University, 1934. Attorney General of Nevada, 1942–50.

PAUL J. FANNIN, Arizona. Member, United States Senate since 1965. Governor of Arizona, 1958–64. A.B. Stanford University, 1930. Chairman, Western Governors' Conference, 1963. Member of President's Civil Defense Advisory Council, 1963–64.

HENRY M. JACKSON, Washington. Member, United States Senate since January 1953; Chairman, Committee on Interior and Insular Affairs and Chairman, Special Subcommittee on Legislative Oversight. Member, House of Representatives, 1941–53. LL.B. University of Washington, 1935. Chairman, Democratic National Committee, 1960–61.

LEN B. JORDAN, Idaho. Appointed to the Senate 1962 to fill a vacancy; elected same year for remainder of term and has been member continuously since. A.B. University of Oregon, 1923. Member, Phi Beta Kappa. Governor of Idaho, 1951–55; Member, Idaho Legislature, 1947; Member of International Joint Commission, 1955–57; International Development Advisory Board, 1958–59; Member, Lewis and Clark Trail Commission.

Appointed by the Speaker of the House of Representatives:

(All are Members of the Committee on Interior and Insular Affairs)

WALTER S. BARING, Nevada. Member, House of Representatives, 1949–1952, and continuously since 1956; Chairman Public Lands Subcommittee, Committee on Interior and Insular Affairs. B.S., A.B. University of Nevada, 1934. Elected to Nevada State Legislature in 1936 and 1942.

LAURENCE J. BURTON, Utah. Member, House of Representatives since 1963. B.S. University of Utah, 1951; M.S. Utah State University, 1956. Regional Director, American College Public Relations Association, 1954–55; Legislative Assistant to Congressman Henry Dixon, 1957–58; Assistant Professor of Political Science, Weber State College 1958–60; Administrative Assistant to Governor of Utah, 1960–62.

JOHN H. KYL, Iowa. Member, House of Representatives, 1959–64, and continuously since 1967. A.B. Nebraska State Teachers College at Wayne; M.A. University of Nebraska. Member of the Outdoor Recreation Resources Review Commission; Lewis and Clark Trail Commission.

JOHN P. SAYLOR, Pennsylvania. Member, House of Representatives since 1949. A. B. Franklin and Marshall College, 1929; LL.B. Dickson Law School, 1933. Member, Outdoor Recreation Resources Review Commission; National Forest Reservation Commission; American Revolution Bicentennial Commission.

ROY A. TAYLOR, North Carolina. Member, House of Representatives since 1960; Chairman Subcommittee on National Parks and Recreation. A.B. Maryville College, 1931; Attended Asheville University Law School and was admitted to the Bar in 1936. Member, North Carolina General Assembly, 1947–53; County Attorney, Buncombe County, North Carolina, 1949–60.

MORRIS K. UDALL, Arizona. Member, House of Representatives since 1961. LL.B. University of Arizona, 1949. County Attorney, Pima County, Arizona, 1952–54. Lecturer on labor law, University of Arizona, 1955–56.

Governors' Representatives

At the request of the Commission, the Governors of the 50 states appointed representatives to provide an orderly and effective means of cooperation. The following are the persons who served in this capacity during the work of the Commission. In cases where more than one representative is listed, the first is the one serving at the time of publication of this report.

Alabama

Joe W. Graham
Director
Department of Conservation
State of Alabama
Montgomery, Alabama

Claude D. Kelley
Director
Department of Conservation

Alaska

Robert L. Hartig
Assistant Attorney General
State of Alaska
Anchorage, Alaska

Roscoe E. Bell
Director
Division of Lands
Department of Natural Resources
State of Alaska

Edgar P. Boyko
Attorney General
State of Alaska

Donald A. Burr
Attorney General
State of Alaska

Warren C. Colver
Attorney General
State of Alaska

Arizona

Floyd N. Smith
Vice President
Salt River Project
Phoenix, Arizona

Arkansas

H. Y. Rowe
Practicing Attorney
El Dorado, Arkansas

California

Norman B. Livermore, Jr.
Administrator
The Resources Agency of California
Sacramento, California

Sherman Chickering
Practicing Attorney
San Francisco, California

Hugo Fisher
Administrator
The Resources Agency of California

Colorado

Stephen H. Hart
Practicing Attorney
Denver, Colorado

Connecticut

Joseph N. Gill
Commissioner
Department of Agriculture and Natural Resources
Hartford, Connecticut

Delaware

Rudolph Jass
Director
Delaware State Planning Office
Dover, Delaware

Robert Thurston Barrett
Administrative Assistant to the Governor

William T. Quillen
Administrative Assistant to the Governor

Theodore S. Sandstrom
Administrative Assistant to the Governor

Florida

Ney Landrum
Associate Director
Division of Recreation and Parks
State of Florida
Tallahassee, Florida

Robert C. Parker
Director
Trustees of Internal Improvement Fund
Tallahassee, Florida

Nathaniel P. Reed
Administrative Assistant to the Governor

Georgia

H. Oliver Welch
State Planning Officer
Atlanta, Georgia

Horace G. Caldwell
Director
Department of State Parks

Hawaii

Sunao Kido
Chairman
State Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Jim P. Ferry
Chairman
State Board of Land and Natural Resources

Idaho

Gordon Trombley
State Land Commissioner
Boise, Idaho

Donald R. Theophilus
Retired president of University of Idaho
Moscow, Idaho

Illinois

Dan Malkovich
Acting Director
Department of Conservation
State of Illinois
Springfield, Illinois

William T. Lodge
Director
Department of Conservation

Indiana

Perley H. Provost, Jr.
Director
Department of Natural Resources
State of Indiana
Indianapolis, Indiana

Iowa

Everett B. Speaker
Director
State Conservation Commission
Des Moines, Iowa

Lawrence Scalise
Attorney General
State of Iowa

Kansas

Newell A. George
Practicing Attorney
Kansas City, Kansas

Ronald H. Baxter
Legal Assistant
Office of the Governor

Leland E. Nordling
Practicing Attorney
Hugoton, Kansas

Kentucky

Joseph C. DeWeese
Director
Washington Office
Commonwealth of Kentucky
Washington, D. C.

L. Felix Joyner
Commissioner of Finance
Commonwealth of Kentucky
Frankfort, Kentucky

Louisiana

Ellen Bryan Moore (Mrs.)
Register of Lands
State of Louisiana
Baton Rouge, Louisiana

Maine

Lawrence Stuart
Director
State Park and Recreation Commission
Augusta, Maine

Richard J. Dubord
Attorney General
State of Maine

Maryland

Spencer P. Ellis
Director
Department of Forests and Parks
State of Maryland
Annapolis, Maryland

Massachusetts

Robert L. Yasi
Chief Secretary to the Governor
Executive Department
Boston, Massachusetts

Raymond M. Trudel
Coordinator of Intergovernmental Affairs
State of Massachusetts

Michigan

Joseph D. Stephansky
Chief, Lands Section
Department of Natural Resources
State of Michigan
Lansing, Michigan

Minnesota

Clarence Buckman
Deputy Commissioner
Department of Conservation
St. Paul, Minnesota

Wayne H. Olson
Commissioner of Conservation

Robert L. Herbst
Assistant Commissioner of Conservation

Mississippi

John Land McDavid
Practicing Attorney
Jackson, Mississippi

Missouri

Robert L. Dunkeson
Executive Secretary
Inter-Agency Council for Outdoor Recreation
State of Missouri
Jefferson City, Missouri

Joseph Jaeger, Jr.
Executive Secretary
Inter-Agency Council for Outdoor Recreation

Montana

Ted Schwinden
Commissioner
State Lands and Investments
State of Montana
Helena, Montana

Mons L. Teigen
Commissioner
State Lands and Investments

Nebraska

M. O. Steen
Director
Game, Forestation, and Parks Commission
State of Nebraska
Lincoln, Nebraska

Nevada

Elmo J. DeRicco
Director
Department of Conservation and Natural Resources
State of Nevada
Carson City, Nevada

New Hampshire

J. Wilcox Brown
R.F.D. #2
Concord, New Hampshire

New Jersey

Joseph T. Barber
Acting Commissioner
Department of Conservation and Economic Development
State of New Jersey
Trenton, New Jersey

Robert A. Roe
Commissioner
Department of Conservation and Economic Development

New Mexico

Reuben Pankey
P.O. Box 672
Truth or Consequences, New Mexico

James E. Sperling
Practicing Attorney
Albuquerque, New Mexico

New York

Charles LaBelle
Counsel
Department of Conservation
State of New York
Albany, New York

North Carolina

Ralph C. Winkworth
State Forester
Department of Conservation and Development
State of North Carolina
Raleigh, North Carolina

Fred H. Claridge
State Forester

North Dakota

Clifford M. Jochim
Special Assistant
State Water Commission
Bismarck, North Dakota

Ohio

Fred E. Morr
Director
Department of Natural Resources
State of Ohio
Columbus, Ohio

Oklahoma

Bill Sharp
c/o Commissioners of the Land Office
State of Oklahoma
Oklahoma City, Oklahoma

Wendell Bever
Director
Department of Wildlife Conservation
State of Oklahoma

Oregon

Robert F. Smith
Member
House of Representatives
State of Oregon
Salem, Oregon

Pennsylvania

Irving Hand
Executive Director
State Planning Board
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

Rhode Island

Adolph T. Schmidt
Director
Rhode Island Development Council
Providence, Rhode Island

South Carolina

Daniel R. McLeod
Attorney General
State of South Carolina
Columbia, South Carolina

South Dakota

Ingebert Fauske
Quinn, South Dakota

Tennessee

William Slayden (Col.) (USA-Ret.)
Deputy Commissioner
Department of Conservation
State of Tennessee
Nashville, Tennessee

Roy S. Hicks
Special Assistant to the Governor

Texas

Jerry Sadler
Land Commissioner
General Land Office
State of Texas
Austin, Texas

Utah

Glen M. Hatch
Counsel
Mountain Fuel Supply Company
Salt Lake City, Utah

Donald Schwinn
General Counsel
Kennecott Copper Corporation
Salt Lake City, Utah

Vermont

Belmont Pitkin
Coordinator of Land Use
Goddard College
Plainfield, Vermont

Virginia

Marvin M. Sutherland
Director
Department of Conservation and Economic Development
Commonwealth of Virginia
Richmond, Virginia

Washington

Bert L. Cole
Commissioner of Public Lands
State of Washington
Olympia, Washington

West Virginia

T. R. Samsell
Director
Department of Natural Resources
State of West Virginia
Charleston, West Virginia

Darrell V. McGraw, Jr.
Administrative Assistant to the Governor

Wisconsin

Robert W. Warren
Attorney General
State of Wisconsin
Madison, Wisconsin

Bronson C. LaFollette
Attorney General
State of Wisconsin

Wyoming

Frank C. Mockler
Practicing Attorney
Lander, Wyoming

IDENTICAL LETTER TO:

CHAIRMAN, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
HOUSE OF REPRESENTATIVES

How the Work Was Accomplished

PUBLIC LAND LAW REVIEW COMMISSION
1730 K STREET, N.W.
WASHINGTON, D. C. 20006

April 22, 1970

Honorable Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In accordance with our commitment to advise the legislative committees having jurisdiction over the activities of this Commission, I am pleased to furnish this report on the manner in which the review of the public land laws and the rules, regulations, policies, and practices governing their administration was conducted.

Following the Commission's organization meeting on July 14, 1965, office space was obtained as promptly as possible, and I assumed full-time work for the Commission on August 2, 1965. It was not until 5 months later, at the beginning of January 1966, that we were able to fill the major staff positions. Although we were authorized 54 personnel through the appropriation process, we never were able to obtain all of the skills required. The maximum number on the staff at any one time was 48.

During the course of the work effort, there were many personnel changes. However, most of the senior staff that started with us, have been with us right up to the end. We were fortunate in having obtained initially, and later as replacements, individuals who were qualified technically for the type of policy study and analysis required. For the information of your Committee, Attachment No. 1 sets forth the background of each of the senior staff personnel who have been preparing material for consideration by the Commission during the critical time in which the Commission made its recommendations and approved its final report.

Even before the basic staff organization was completed, we started work on the design of a research program in order to provide for the Commission the necessary background law and facts. The underlying concepts were that every aspect of public land policy must be examined so that no myths would be enshrined and that we must prepare the specifications for all studies so that we would be assured of usable products.

As part of our effort to identify problem areas, we asked the members of the Advisory Council for their views, and also asked them to set forth their thoughts on the role of the public lands. These subjects were then discussed by the Commission at the Advisory Council meeting with the Governors' Representatives participating, in March 1966. A program setting forth the overall objectives, functions, and operations of the Commission was being developed during this period. The senior staff met with the Chairman and Vice Chairman and several consultants in April 1966, at Camp Hoover in the Shenandoah National Park. That weekend the group spent its entire time focusing on the subject and how the Commission should accomplish its tasks.

The program paper was circulated and views obtained from the members of the Commission,

the Advisory Council, and the Representatives of the 50 Governors. Completed in May as a blueprint for the accomplishment of the Commission's task, it was transmitted to you by letter dated June 1, 1966. A copy is attached for ready reference as Attachment No. 2.

In May 1966, plans were completed for the first of a series of meetings throughout the country designed to hear from people who live in and near public land areas in order to obtain their suggestions as to specific matters that required Commission attention. That meeting was held in Salt Lake City, Utah, June 7 and 8, 1966. It was followed by meetings throughout the country in 9 additional regions, as listed on Attachment No. 3.

In conjunction with these regional meetings, tours of public land areas were arranged for Commissioners and members of the official family in attendance, so that we could see on the ground different types of areas and how they were utilized by people who live there. The diversity in type and use of the public lands was thus demonstrated. During the course of these meetings, suggestions were obtained from over 900 witnesses whose ideas concerning matters that required attention were made part of our research program for study and Commission consideration.

Although the scope of the subjects to be included in the research program had not yet been made final, the first formal study was undertaken in June 1966, when Professor Paul Wallace Gates of Cornell University was retained as a consultant to prepare a History of Public Land Law Development. Subsequently, we retained Professor Robert W. Swenson of the University of Utah to prepare the chapter on mineral law development.

At the meeting of the Advisory Council in Albuquerque, New Mexico, on November 10, 1966, we announced 25 individual studies on public lands and their resources. This list was later expanded to 34 and then, after two were combined, resulted in a list of 33 subjects concerning which separate manuscripts were being written. It was always our idea that most of the individual studies would be accomplished under contract and this was done, but several were accomplished in-house by our own staff, some with consultant assistance. Attachment No. 4 lists all of the subjects together with statements concerning the Commission's policy relative to access to and publication of these manuscripts, indicating those that are available for purchase by the public at this time. It is planned that all manuscripts will be available.

Identifying individual subjects for studies did not mean that we lost sight of the basic concept of the Commission, i.e., the necessity for one group at one time and place to review all of the public land laws and their administration. It was merely as a matter of convenience that these individual subjects were identified. While contractors focused on the narrow subject of a particular study, the staff had the continuing responsibility of identifying for the Commission's consideration the interrelationships among the various subjects. In order to accomplish our end, we had to make some arbitrary decisions to avoid, or minimize, duplication which should be kept in mind when individual manuscripts are examined. For example, hunting and fishing for study purposes was included in the examination of the subject of Fish and Wildlife, rather than in the manuscript on Outdoor Recreation.

A combination of factors, including the fact that the work of the Commission did not get underway until almost a year after its Organic Act became law and that the scope of the study program was larger than had been envisioned, necessitated the Commission to request an extension of the date by which its report should be submitted from December 31, 1968, to June 30, 1970, and to increase the funds authorized for the entire review from $4 million to $7.39 million. The Act of December 18, 1967 (PL 90–213; 81 Stat. 660) authorized these modifications in the Organic Act.

In addition to designing specifications for studies, the staff engaged in work on some studies and supervised those being accomplished under contract.

Following the meeting of the Advisory Council in Tucson, Arizona, the Commission met in executive session on November 10, 1968, and considered the first subject to come before it for decisionmaking. Under the procedure adopted, the staff prepared a policy evaluation paper for each subject which outlines the problems as discerned from the study report, material submitted by members of the Advisory Council and the Governors' Representatives, testimony of witnesses, and comments from the Federal departments and agencies. The paper then presented to the Commission the analysis of the problems, stated the matters of policy that required consideration, and discussed these matters of policy in the light of the contractor's report and the discussion with the Advisory Council and the recommendations submitted by the public. Alterna-

tives were then offered for consideration by the Commission on these policy matters, together with the pros and cons of each.

In its discussions, the members of the Commission questioned the study project officer who had either prepared or supervised preparation of the report involved, and also questioned and discussed the issues with members of the senior staff.

Necessarily, as each subject was taken up, the Commission could only arrive at *tentative* positions because of the interrelationship among subjects and the bearing that a later subject might have on the one being considered at any particular time. In the policy evaluation papers and in the discussions reference was continually made to tentative positions taken previously so that the Commission could examine the interrelationships and consistencies.

From January 1969 through April 1970, the Commission met once a month, except that there were no meetings in March or November 1969, while there were two in each September and October, 1969, and March and April, 1970. The 33 subjects were considered individually and collectively at these 19 meetings in these 16 months.

Our next task was to prepare draft material for the final report based on the tentative positions taken previously. In order to maintain the schedule necessary to complete the work on time, the Commission reviewed the first draft text material at its meeting December 12, 1969, before it had completed the review of individual subjects. During the review of draft material, some of the tentative positions were reconsidered and new positions taken. Subsequently, on some matters, the Commission asked that material be rewritten and brought back for its further examination of language. But for all subjects, the Commission had a third opportunity to make new decisions and recommendations when the draft was rewritten in final form after taking into consideration the consensus views expressed during review of the draft chapters which were read aloud with each member having a copy before him. The Director presented the draft material and was questioned by the members who discussed the subject among themselves. Members of the senior staff were called upon as necessary to provide detailed information.

The Commission concluded its series of meetings on April 18, 1970, after completing a review of inconsistencies and gaps among the individual subjects.

In order to assure that copies of the report are available to all members of Congress and the public when it is submitted to the President, the President of the Senate, and the Speaker of the House of Representatives not later than June 30, 1970, in accordance with law, it is necessary to deliver the manuscript of the report to the Government Printing Office April 23, 1970.

Between now and December 1970, when the Commission must go out of existence, our first major effort will be in seeking the settlement of claims presented by contractors for additional compensation. Simultaneously, we will be planning a series of meetings of opinionmakers to be held after the report is submitted for the purpose of conveying the importance of the public lands to the people of the United States and the potential significance of the Commission's recommendations. This should enable opinionmakers who were not represented on the Commission's Advisory Council, to interpret for their members or audiences the Commission's report, regardless of whether they concur or disagree. It is planned that one meeting will be held for leaders of the news media—as distinguished from the working press for whom we will have a conference at the time the report is submitted—with other meetings to be held to the extent that our funds will allow, in the East, the Midwest, the Rocky Mountain West, and the far West.

In addition to the Advisory Council, the Governors' Representatives and the contractors who prepared most of the studies, we called on many individuals as consultants. Some served without compensation. To all of them we express our thanks for their advice and counsel. A listing of these consultants is contained in Attachment No. 5.

Except for the work that remains, as outlined above, the Commission's tasks are virtually completed. In addition to the fact that the work is being accomplished within the time schedule established by us, we also note for the record that if our budget request for the 6 months of the next fiscal year is acted on favorably, there will remain $286,000 authorized but unappropriated. The only thing that might upset this favorable condition would be the settlement of claims from contractors for additional compensation. We have some contingency funds, but do not know at this time whether they will be adequate to settle the 6 pending claims from contractors that aggregate $231,000.

Should there be any additional information or data that would be helpful to your Committee, we will be happy to furnish it on request.

Sincerely,

Milton A. Pearl
Director

Attachments

Attachment No. 1
Letter to Chairman,
Senate Interior Committee,
dated April 22, 1970

THE SENIOR STAFF

MILTON A. PEARL, Director. A.B. New York University 1934; J.D. 1936. Member professional staff Committee on Interior and Insular Affairs, House of Representatives, 1961–65.

ELMER F. BENNETT, Assistant to the Director and General Counsel. A.B., Colorado State College of Education, 1938; LL.B., Stanford University, 1941. Partner, Ely, Duncan & Bennett, Washington, D. C., 1961–65. Undersecretary, Department of the Interior, 1958–61, after serving in other capacities in the Department from 1953.

DENNIS A. RAPP, Chief, Resources and Evaluation Group. B.S., University of Minnesota, 1952; Master of Public Administration, Harvard University, 1958. Senior Budget Analyst, Bureau of the Budget, 1961–65; Research Analyst, Outdoor Recreation Review Commission, 1960–61.

JEROME C. MUYS, Chief, Legal Group, and Assistant General Counsel. A.B. Princeton University, 1954; LL.B., Stanford University, 1957. Partner, Ely, Duncan & Bennett, Washington, D. C. 1958–65.

CHARLES CONKLIN, Assistant Director. B.A., Harvard University, 1948; LL.B., 1951. Member, Phi Beta Kappa. General practice of law, Colorado, 1953–67. Member, Colorado General Assembly, and Speaker, House of Representatives, 1957–60.

PERRY R. HAGENSTEIN, Assistant Chief, Resources and Evaluation Group. B.S., University of Minnesota, 1952; M.A. (Forestry) Yale University, 1953; Ph.D., University of Michigan, 1963. Acting Assistant Director and Principal Economist, U.S. Forest Service, Upper Darby, Pa., 1965–66.

ARTHUR B. MEYER, Editor. B.S., Michigan State University, 1938. Editor, Journal of Forestry, official publication of the Society of American Foresters, 1953–68. Co-author, *The World of the Forest;* co-editor, *Forestry Handbook* and *Forestry Terminology*.

THOMAS J. CAVANAUGH, Assistant to the General Counsel. LL.B. University of Montana, 1949. Associate Solicitor for Public Lands, Department of the Interior, 1961–69. General practice of law, Montana, 1949–61.

Attachment No. 2
Letter to Chairman
Senate Interior Committee
dated April 22, 1970

PUBLIC LAND LAW REVIEW COMMISSION OBJECTIVE, FUNCTIONS, AND OPERATIONS

INTRODUCTION

This paper sets forth the overall program for the accomplishment of the tasks assigned to the Public Land Law Review Commission. It will provide guidance in identifying and conducting specific studies. It provides the Commission, the Advisory

Council, and the Governors' Representatives with a guide to the planned activities of the Commission staff.

The plan contains, first, a statement and discussion of the Commission's objective; second, a description of the methods of operation and general procedures to be followed by the Commission and its staff; and third, a general description of the study program and the way in which it will be organized. It does not contain a list of individual studies or specific issues that will be considered; the approach to these will, however, follow logically from the program. All studies will be based on the reasoning of, and follow the procedures indicated in, the program.

The program provides a set of guidelines to be used by the staff to develop detailed study plans. All major studies of the Commission are visualized as being a part of this overall plan.

The design and conduct of individual studies will be the work of the Legal and Resources Groups in their respective areas. Where appropriate, the two groups will act jointly on a single study with one being given primary responsibility. The results of the studies will be correlated by the third of the groups into which the professional staff is organized, i.e., the Evaluation Group.

For the purposes of our program, the following definitions apply:

Program:

A comprehensive statement of the objective, functions, and operations of the Public Land Law Review Commission and its staff, including a listing of the major fields of study into which the overall program is divided. Unless specifically indicated, the sequence in which fields of study are listed does not indicate priority or relative importance.

Study Program:

An overall, broad outline indicating the scope of the studies to be accomplished.

Field of Study:

Subject matter that forms a logical segment within which several individual studies would be made.

Profile:

An analysis, which may be in narrative, outline, list, or graphic form. It shows the types of information necessary to consider in making a study, permit evaluation of past and present public policy, and permit recommendations to be made concerning future policy guidelines relative to a single subject. In addition, it will include, as a minimum (1) a summarization of study suggestions submitted to the Commission with regard to the subject; (2) a statement of types of background facts to be collected; (3) a summarization of the issues relating to the subject; (4) factors involved in the issues; (5) a statement of types of facts necessary to review in order to make recommendations concerning such issues; (6) the studies deemed necessary; and (7) recommendations on how such studies should best be accomplished.

Study Plan:

An outline, narrative, or graphic, setting forth the content required of an individual study, together with the establishment of procedures by which the study should be accomplished.

Study:

The activity or series of activities that result in a study report.

Study Report:

A document, prepared after a thorough examination and analysis of a subject, presenting in logical format and sequence, pertinent factors concerning the subject which may be a commodity, law, regulation, rule, practice, procedure, or groupings thereof, including, where appropriate, presentation of reasonable alternative actions for the future, with probable consequences of each but without incorporating conclusions or recommendations.

Commodity:

Any good or service, free or economic, tangible, or intangible, which is produced by, extractable from, or available from the use of, or represented by land, and has utility value.

Budget:

The application of costs in terms of dollars and manpower, supplies and equipment, required to execute the program or a segment of the program for a specified time period.

PUBLIC LAND LAW REVIEW COMMISSION

I. Objective

The Commission's objective—its reason for being—is the central point in designing the overall program, or any portion of it, and determining staff operations which will best serve the Commission's needs in pursuing this objective. This objective is found in Public Law 88–606, hereinafter referred to as the Act, and is restated here for ready and constant reference:

Report to the President and the Congress with recommendations of those actions, administrative or legislative, which should be taken to assure 'that the public lands of the United States shall be (a) retained and managed or

(b) disposed of, all in a manner to provide the maximum benefit for the general public.'[1]

Comment.—It is recognized that the spirit of the foregoing objective and the tenor of the Act,[2] necessitate seeking to assure fairness and equity in the administration of the public lands, including both (1) disposition of lands or their resources, and (2) the management of lands and their resources when lands are retained in Federal Government ownership.

II. Methods of Operation

The Act sets forth some of the means by which the Commission is to accomplish its objective. For convenience, these are broken down into two categories: (1) the broad overall requirements that the Commission must fulfill before formulating its recommendations; and (2) the specific actions required to be taken in carrying out the overall mandate.

In addition, we have other actions, not specifically set forth in the law, that are necessary for the comprehensive review essential for the foundation on which the Commission's conclusions and recommendations will be based.

A. Overall Requirements

1. Review each of the public land laws now in existence and the relationship of each to the others. The Declaration of Purpose of the Act[3] cites as a basic reason for the establishment of the Commission the fact that, "the public land laws of the United States have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other . . ." Now, for the first time, all the acts that comprise the public land laws of the United States will be brought before one group for review.

2. Review the public land laws to determine their adequacy to meet the current and future needs of the American people in terms of the policy declaration in the Act, that the public lands of the United States shall be retained and managed or disposed of in a manner to provide maximum benefit for the general public.

Comment.—The Declaration of Purpose[4] of the Act states that the public land laws, "or some of them, may be inadequate to meet the current and future needs of the American people," and that for this and other reasons stated therein (and set forth in subparagraph 1 above and subparagraph 3 below), "it is necessary to have a comprehensive review of the public land laws."

3. Identify and evaluate the division of the administration of public lands and the laws relating thereto among several agencies of the Federal Government. The Act states[5] this is one of the reasons for the review being undertaken by the Public Land Law Review Commission.

Comment.—Now, for the first time, there has been established an organizational structure, with participation from both the legislative and executive branches, that will be in a position to review the administration by the various departments and agencies involved, and the rules and regulations promulgated under the public land laws, as opposed to the usual procedure where the practices of each department and agency are reviewed without regard to another's.

Having reviewed differing administrative practices and procedures, the Commission must then evaluate them to determine whether maintenance of divided administrative authority is structured to accomplish the policy declaration of the Act that the public lands of the United States shall be either retained and managed or disposed of in a manner to provide maximum benefit for the general public.

4. Determine, on the basis of all the studies, whether and to what extent revisions are necessary in the public land laws and the rules and regulations promulgated thereunder.

B. Consideration of the Requirements

1. The foregoing requirements of the Act must be fulfilled in a manner to assure a complete understanding at all times among the members of the Commission and the members of the staff as to how the Commission's objective will be attained. We must further assure:

a. Total coverage of all essential factors; and

b. That all factors are approached and considered with objectivity.

2. The theme that runs through each of the individual requirements leading to the final report of the Commission relates to the policy declaration that the public lands must service the maximum benefit for the general public. It is, accordingly, essential to establish a framework within which:

a. Required and other necessary actions and studies leading to the final report can be taken; and

b. Results of these actions and studies can be

[1] Sections 1 and 4(a).
[2] Sections 2 and 4.
[3] Section 2.
[4] Ibid.
[5] Section 2.

measured to determine what does and what does not contribute to the maximum benefit for the general public.

3. Our studies, among other things, should, therefore, be aimed at examining these aspects of the public lands concerning which the Commission must make recommendations:

a. The purposes that the public lands serve in contributing to "the maximum benefit for the general public," to permit ultimately an evaluation of whether these purposes should be reaffirmed or redefined.

b. The existing policies and practices in the broadest sense, including statute law and judicial and administrative interpretations applicable to the public lands, to determine whether they are so designed as to give reasonable assurance that "the maximum benefit for the general public" is being or can and will be attained.

C. REQUIRED ACTIONS

1. To make a comprehensive review of the public land laws and the rules and regulations promulgated thereunder applicable to the lands concerning which the Commission must make its recommendations.

Comment.—(1) The Declaration of Purpose of the Act [6] states that such review is necessary. The Act further elaborates on how this review is to be accomplished by requiring the Commission to:

(a) "Study existing statutes and regulations governing the retention, management, and disposition of the public lands"; and

(b) "Review the policies and practices of the Federal agencies charged with administrative jurisdiction over such lands insofar as such policies and practices relate to the retention, management, and disposition of those lands." [7]

(2) The accomplishment of this comprehensive review must be in two stages:

(a) An examination of the laws, rules, and regulations to determine "where we are" and "how we got here"; and

(b) An evaluation of those laws, rules, and regulations.

2. To "compile data necessary to understand and determine the various demands on the public lands which now exist and which are likely to exist within the foreseeable future." [8]

Comment.—The data so compiled are necessary to permit the Commission to determine whether present laws are "inadequate to meet the current and future needs of the American people," one of the main overall requirements of the Commission (II. A. 2., above). These data will reflect current and future commodity use from the public lands with relationship to national and regional economic demands for the commodities. Development of the data will entail projecting technological improvement in resource extraction practices.

3. To evaluate the capacity of the public lands concerning which the Commission must make its recommendations, to determine in what circumstances those lands "provide the maximum benefit for the general public" when retained and managed under Federal ownership, and in what circumstances "they provide the maximum benefit for the general public" in non-Federal ownership.

Comment.—This requirement serves to develop the basis for the Commission's recommendations. Accordingly, most, if not all, studies must be so structured as to permit analysis as to whether, and under what circumstances, retention or disposition provides maximum benefit for the general public.

D. OTHER NECESSARY ACTIONS

1. To review the authorities exercised by the legislative and executive branches with regard to the public lands concerning which the Commission is required to make recommendations.

Comment.—(1) Consideration of many individual pieces of legislation, testimony, and discussion have revolved around the degree of responsibility and authority to be exercised by the legislative branch and the degree to be delegated by it to the executive branch.

(2) The legislative history of the Act, and much of the dialogue in support of the legislation for establishment of the Public Land Law Review Commission, indicate that significant inpetus for the Commission study came from the belief by many that Congress was not fulfilling its constitutional responsibility to make rules governing the use and disposition of public lands. This, they maintained, left the executive branch with inadequate legislative guidelines, and resulted in the assertion of executive authority to fill the void.

(3) It is, therefore, necessary to undertake studies to indicate:

(a) the extent, if any, to which Congress has abdicated its authority;

(b) the extent, if any, to which the Executive has filled the gap by assuming policy-making with regard to the use and disposition of the public lands; and

(c) the extent, if any, to which the Executive

[6] Section 2.
[7] Section 4(a).
[8] Ibid.

has altered congressionally established policy through the assumption of policy-making authority or interpretation of Acts of Congress.

(4) Where appropriate, in the review of laws, rules, and regulations, these factors must constantly be kept in mind in order to permit eventual conclusions by the Commission and recommendations for future division of responsibility and authority.

2. To gather definitive data relative to the public lands concerning which the Commission must submit recommendations.

Comment.—Relying to the extent possible on existing data, it is essential, before making recommendations, that the Commission have the closest insight possible into the characteristics of these lands. These characteristics should include physical and locational as well as economic considerations that will stem from the compilation of data relative to the demands. In addition, statistical data by states and agencies must be presented in such manner as to identify these characteristics readily. These data differ from those relating to commodity demands (II. C. 2., above) by being concerned primarily with a description of the lands under study. These data will present a general statistical "picture" of the lands, not a measure of their productivity, nor a measure of the productivity as compared with the Nation's needs.

3. To review management practices and utilization of federally-owned lands and aspects of the Outer Continental Shelf concerning which the Commission is not required to make recommendations but which have characteristics similar to, or are managed in conjunction with, those lands concerning which the Commission is required to submit recommendations.

Comment.—(1) Such study is essential, on the one hand, to assure that all criteria for use and management are taken into consideration before the Commission makes its recommendations. On the other hand, some of our studies may develop data as to whether other federally-owned or controlled lands or resources should be retained in a category or categories separate and apart from lands and the resources defined in the Act, in which event the Commission's recommendations may also be found to be applicable to such other lands or resources.

(2) Laws, rules, regulations, practices, and procedures will be studied in this context as they relate to the management, use, and disposition of, for example, national grasslands and LU lands. Likewise, if management practices are reviewed for the purpose of determining (a) objectives of the National Park System, and (b) whether these objectives are being achieved, it would be illogical to examine the practices and procedures of only those parks or national monuments that have been carved out of the public domain and not compare them with procedures and practices in effect at other parks and monuments.

4. To review laws, rules, regulations, practices, and procedures for the acquisition by the Federal Government of land and interests in land.

Comment.—Even if construed narrowly, the Act would require a review of land acquisition for national forests and wildlife refuges and ranges. In addition, the legislative history is clear that attention must be given to the possible acquisition of non-Federal lands intermingled with public lands, thereby indicating the necessity to review acquisition procedures.

In order to measure the adequacy of acquisition methods in these areas, it is necessary to make comparative reviews of other acquisition laws, rules, regulations, practices, and procedures.

III. Method of Procedure

A. Identifying the Subjects for Study

1. To assure identification of all significant subjects warranting study to fulfill the Commission's objective and to carry out the required and necessary actions set forth above, a concerted effort has been made, and must be continued, to obtain views and suggestions not only from members of the Commission, members of the Advisory Council, Governors' Representatives, and Commission staff, but also from interested individuals and groups. This will be accomplished by:

a. Continuing to invite such suggestions when members of the Commission and members of the staff appear before interested groups.

b. Holding regional meetings to permit individuals who do not belong to organized groups to come in and be given the opportunity to tell of their experience in the actual use of lands and the administration of the public land laws.

B. Approaching the Study

1. It is important to develop and fulfill a series of study plans designed to carry out the actions detailed above as required and necessary to achieve the Commission's objective. These study plans must either be integrated to embody both the legal and non-legal aspects, or must be so structured as to provide legal and non-legal studies that are complementary each to the other except where an affirmative determination is made that no complementary study is necessary.

2. In order further to structure study plans directed at the objective of the Commission's study program, it is necessary to provide a frame of reference within which to judge whether specific uses or actions with relation to the public lands "provide the maximum benefit for the general public." Broadly speaking, we will consider uses and actions in two categories:

a. The interest of the United States as the owner of the public lands; and

b. The contribution that the public lands can make to the Nation's economy and to the people.

3. For the purpose of obtaining information on specific matters that have presented bothersome or troublesome situations to the users or prospective users of the public lands, it is necessary to conduct a series of hearings or meetings.

4. To serve as a check against the studies carried out under subparagraph 1 above, it is necessary to review and analyze in depth selected cases in which individuals or groups have been granted or denied interests or privileges that they had sought on the public lands concerning which the Commission must make recommendations.

Comment.—Some of these cases will be selected from among those that have been or will be referred to the Commission from various sources, others will be identified from departmental records studied during the review of the administration of the laws, and still others will be highlighted in the meetings and hearings referred to above.

IV. Sequence of Operations

A. The Basic Studies (Phase 1)

A series of study plans, the development of which is discussed below, will be designed and the studies completed to determine:

1. The state of the law;
2. The facts concerning the resources; and
3. Factors related to the land and resources necessary for a full understanding of the facts, all upon which the staff and the Commission can make judgments or draw conclusions.

Comment.—(1) The actions in this phase of the operations will, to the extent possible, be accomplished under contract or through the use of consultants and experts. In the development of study plans, the staff will consult with members of the Advisory Council and the Governors' Representatives as necessary to obtain technical advice or background information.

(2) During this phase the Commission and its staff will:

(a) Conduct the hearings or meetings referred to above.

(b) Identify sample cases and carry out the case studies referred to above.

(i) These case analyses would be the primary responsibility of the staff. Comments as appropriate would also be invited from members of the Advisory Council and the Governors' Representatives.

B. Evaluating the Studies (Phase 2)

The second phase will evaluate material brought out in Phase 1. It will be initiated before the first phase is fully accomplished.

Comment.—Actions in this phase will be the primary responsibility of the staff. The staff will consult with members of the Advisory Council and Governors' Representatives. However, it may be necessary to bring in consultants to assist.

C. Policy Determinations (Phase 3)

In this stage, the Commission will make determinations concerning the general direction of the policy guidelines to be recommended. These determinations will be based on the background and evaluation studies completed in Phases 1 and 2.

D. Special Studies (Phase 4)

Study plans may be required in specific areas to provide additional information before recommendations can be made on the means by which to accomplish the policy guideline directions agreed upon in Phase 3.

Comment.—These study plans will be developed by the staff after coordination with members of the Advisory Council. These for the most part will involve in-house staff studies which will also be carried out in coordination with members of the Advisory Council. The Governors' Representatives will be consulted as appropriate on matters in which a particular state has a vital concern.

E. Report and Recommendations (Phase 5)

The Commission, after consultation with the Advisory Council and the Governors' Representatives, will formulate its recommendations and final report.

V. The Study Program

A. Structuring the Study Plans

1. Study plans should be so structured as to bring out a comprehensive picture of the subject matter

so fully that there will be a complete understanding of it.

Comment.—This will permit the Commission to make its decisions in the context of what is the maximum benefit for the general public against the set of criteria adopted by the Commission.

2. With respect to each field of study, study plans must be prepared so that, as a minimum, the Commission will be provided with a statement of:

a. The statutes in effect;

b. Interpretations of such statutes reflected in regulations and judicial or administrative opinions; and

c. Agency practices under such statutes and regulations as reflected in agency manuals or directives.

Comment.—Studies must include a review of agency procedures relating to (1) the extent to which effective citizen participation is allowed in the initial decision-making process, and (2) procedures for judicial and administrative hearings and appeals with respect to decisions adversely affecting particular persons.

B. FIELDS OF STUDY

The public lands and their products are viewed as serving some purpose for the public good. The Commission's study program is, therefore, structured around:

1. *Commodities* (Includes all land uses.)

a. Timber and other non-forage vegetation.

b. Forage and browse. (Includes all vegetation used for animal feed.)

c. Energy fuels. (Includes oil, gas, coal, uranium, oil shale, bitumen, tar sands, geothermal steam.)

d. Non-fuel minerals.

e. Water. (While confined to water originating on or flowing across public lands concerning which the Commission is required to make recommendations, it will include use, manipulation, and appropriation of water for all purposes.)

f. Intensive agriculture. (Includes all non-grazing agriculture, e.g., homesteading, irrigation development, use of arid and semi-arid lands, etc.)

g. Wildlife production and harvesting.

h. Fish production and harvesting.

i. Outdoor recreation. (Includes both (1) intensive uses requiring facilities or major development, including camping, picnicking, ski tows, resort development, etc.; and (2) passive use such as preservation attended by little or no development, including wilderness and primitive areas.)

j. Occupancy of land. (Includes military and scientific use, disposal of land or interests in land for rights-of-way, residential, industrial, and commercial development, as well as incidental uses such as trailer courts, billboards, and road signs.)

2. *Intergovernmental transfers and transactions.* (Encompasses land grants to states and all the related policy, including uses to which land grants may be devoted; in-lieu taxes and revenue-sharing; Federal-state-local interrelationships affected by or affecting public lands.)

3. *Regional and local lands use and patterns of growth.* (Includes joint land-use planning; the place of public lands and their use in regional and local development and the use of space.)

4. *Governmental control and administration.*

a. Extent of need for Federal or state legislative jurisdiction.

b. Organizational structure necessary to manage the lands. (Includes, in addition to administrative structure, investment and budgetary practices and policies, personnel and manpower policy, delegations of authority, and division or joint jurisdiction (Federal agency or otherwise) over specific lands or aspects of administration.)

c. Procedures to permit citizen participation in initial decision-making. (Includes the advisory board systems, announcements of proposed actions, and procedures, for hearings on proposed actions.)

d. Procedures to permit appeal from initial decisions. (Includes administrative as well as judicial remedies.)

e. Policies and practices in support of governmental activities or programs. (Includes acquisition of land or interests in land by exchange or otherwise, withdrawals and reservations, surveys, management guidelines to permit use of land to provide the maximum benefit for the general public, and classification of lands.)

5. *Historical development.*

C. CRITERIA TO JUDGE THE FACTS

If our study program is to provide the means whereby the Commission can make judgments on how to "provide the maximum benefit for the general public," it is necessary to establish criteria as to what constitutes the maximum benefit for the general public. This study will be initiated during Phase 1 of the study program.

Comment.—(1) It is not necessary that these criteria be established in advance, and it might even be prejudicial if this were done. The criteria, therefore, will be developed in a separate study initiated during Phase 1 of the Commission's operations.

(2) In developing and accomplishing this study, the views and comments of the members of the Advisory Council and the Governors' Representatives will be obtained, as well as the views and comments of Government officials and persons outside of Government, including economists, historians, scientists, and members of the academic community.

(3) The study would be completed by the staff and presented to the Commission to permit the Commission to adopt its criteria.

VI. Study Plan Objectives

A. Factual and Background Information

In order to make judgments about existing policies and practices in making public lands goods and services available, we need to assemble and analyze material about each subject which will answer the following questions:

1. What is the law pertaining to a particular commodity, taking into consideration judicial and administrative interpretations, as well as statute law?

2. Has statutory law been administered in accordance with the expressed intent of the law?

3. What objective was sought with regard to the commodity by the enactment of statutes involving the commodity?

4. To the extent possible to make an analysis, have the objectives that Congress sought to attain with regard to the commodity been attained in the administration of the law?

5. If one or more agency has had responsibility for management or disposal of the commodity, what different approaches have been utilized in administration?

a. Which approach was closer to (1) fulfilling the congressional objective, and (2) providing the maximum benefit for the general public?

6. How much of the total national consumption or demand for the commodity do the public lands now produce?

a. What is the relative significance of the public lands production?

7. How do present policies and practices affect the manner in which the commodity or service is produced and consumed or the use made available, as compared with production and consumption of similar goods, services, and uses from the non-public land sector?

8. What particular characteristics (organization, income, investment, etc.) of the initial consumer of the goods or services (industry, individual user, etc.) exert a controlling influence on the conditions under which one may extract or use the commodity or service?

9. In what ways do present or prospective changes in technology, utilization, costs, prices, demand, and supply for the product, service, or land use call for changes in public land policy and practice to assure that the commodity will be available in the best manner possible to serve future national needs?

10. Have past and current application of the laws, regulations, rules, policies, and practices caused significant difficulty or raised issues with respect to production, extraction, harvesting, in-place use, or other means of realizing the value of the commodity?

11. Has Federal budgetary or investment policy had a noticeable effect on the production or use of this commodity to serve national, regional, or local needs?

12. How does a commodity benefit the local and regional areas where it is produced, and what is the relationship of such benefits to the benefits for the general (national) public?

13. In what way does the production and/or use of the commodity under present law, regulation, and practice detract from other values or commodities also produced or created by the land?

14. Under what variable circumstances could output of the commodity be increased?

15. What is the potential productivity of the public lands for this commodity?

16. Which policies, practices, and rules, directed primarily at or dictated by considerations related to the needs of the physical or biological resources of the land, modify the conditions bearing on production of the commodity?

B. Development of Standards

It is also essential that study plans be so designed as to produce data and information that will permit full evaluation of all alternatives. By checking information, to be obtained by a study, against the following standards and supplementary questions, we will assure obtaining the necessary data:

1. *Economic efficiency*

a. How do alternatives affect net revenues to the Federal Government? to industry? to individuals?

b. What will the cost to the Federal Government be if the same objective is reached through alternative means? What factors increase Government cost? What factors decrease Government cost?

2. *Investment levels*

a. How do alternatives affect the amount of investment needed by the Federal Government? by industry? by individuals?

3. *Income distribution*

a. How do alternatives affect the income re-

ceived by individuals in different income classes?

b. How do alternatives affect gross income distribution patterns by regions, states, and local areas?

c. How do alternatives affect revenues to states? to local governments?

4. *Land values*

a. How do alternatives affect the value of land owned or controlled by the Federal Government? industry? individuals?

5. *Employment*

a. How do alternatives affect employment levels by region, state, and local areas?

6. *Use*

a. How do alternatives affect level of use of public lands for the Nation as a whole? by region? by states? by local area?

7. *Stability*

a. How do alternatives affect the rate of use of commodities over time by region and state?

8. *Technology*

a. Will technological developments affect alternatives?

b. What technological developments, if any, will be necessary to make alternatives feasible?

9. *Availability*

a. How do alternatives affect the availability of resources for rapid short-term increases in use? for rapid long-term increases?

10. *Economic Growth*

a. How do alternatives stimulate economic growth of the area? region? the Nation as a whole?

b. What contributions over and above increased income levels, employment and investment do alternatives provide to foster growth? utilize local labor force? provide for an upgrading of labor skills? improve the overall quality of labor force in the long run?

c. What effects do alternatives have on diversification vs. concentration of industries? on distribution and transportation costs? on management cost of industries? community? the individual?

11. *Amenities*

a. How do alternatives affect the quality of the environment, e.g., pollution, open space, etc.?

b. How do alternatives affect use for other purposes on same or adjacent lands? for recreation opportunities?

12. *National emergencies*

a. How do alternatives affect resource availability in case of war or other national emergency?

b. How do alternatives effect the reservoir of resources for timely development and use in emergencies?

C. SUPPLEMENTAL QUESTIONS

While the foregoing lists of questions are believed to be all-inclusive and are applicable to all commodities, it is recognized that there will undoubtedly be other questions that will be required with respect to individual commodities. These will be developed within the individual study plans. In the development of study plans, it will, therefore, be necessary for the person drawing the plan to utilize the following tests in order to determine to what extent additional questions should be asked:

1. Will the plan as designed meet one or more of the required or necessary actions detailed in this paper?

2. What other required or necessary actions could be fitted into this study plan?

3. Will the information sought be adequate to answer all questions that may be raised relative to this subject? If not, what other questions should be asked?

4. Is there a more efficient way to get the required information?

Comment.—It is contemplated that each study plan will initially be drafted as comprehensively as possible. Therefore, before it is put out for contract or the work started in-house, it will be reviewed to see whether and to what extent it should be cut down.

VII. Individual Studies

It is proposed to produce the smallest number of individual studies that can be used to analyze the greatest number and variety of subjects and contribute to the fulfillment of the maximum number of required or necessary actions.

A. GROUPINGS

The various fields of study provide the general framework for the design of the Commission studies by subject as listed above. However, there may be a need for material in connection with one subject that is relevant to other subjects or even in other fields. In these instances, it will be necessary to determine whether one study will suffice to cover more than one subject or whether two or more studies will be necessary.

B. PROFILES

In order to assure consideration of all suggestions received from members of the Advisory Council, the

Governors' Representatives, and from other sources, and also to assure a review of all possible aspects of each of the individual subjects, we will first prepare an analysis of each subject, which, for convenience, we will designate as a profile, consisting of the following:

1. Brief summary of all study suggestions related to the subject.

2. Identification of the issues relating to the subject.

3. Identification of the factors involved in the issues, including areas of law, practice, procedure, resource characteristic, user characteristic, and economic considerations.

4. Enumeration of type of facts and data deemed necessary as a base for evaluation of past and present public policy, or to permit judgements to be made concerning future policy guidelines, for each field of study and each subject within the fields of study.

VIII. Coordination With Advisory Council and Governors' Representatives

1. There will be constant liaison to keep the Commission fully informed of staff activity and to assure that the staff is aware of the Commission's views.

2. There will be recurring coordination with the members of the Advisory Council and the Governors' Representatives in order to permit consideration of their views by both the staff and the Commission at each step of the program.

a. The specific means of coordination by the staff at any particular phase of operation will depend upon circumstances. However, aside from giving to Advisory Council members and Governors' Representatives a reasonable time within which to express their views on matters to be referred to them, as indicated above, actions will not be withheld solely because an inquiry to a member of the Advisory Council or Governors' Representative has remained unanswered.

Attachment No. 3
Letter to Chairman
Senate Interior Committee
dated April 22, 1970

REGIONAL PUBLIC MEETINGS

Those interested in the retention, management, and disposition of the public lands were urged to submit their views for inclusion in the research program. In order to provide the greatest possible opportunity to the people, meetings were held in each region of the country and testimony was heard from over 900 witnesses. The meetings were held at the following times and places:

Rocky Mountain Region
Salt Lake City, Utah — June 7–8, 1966

Alaska
Juneau, Anchorage, Fairbanks, and Kotzebue
(Informal meetings at Nome and Kodiak)
July 1–11, 1966

Northeastern
Boston, Massachusetts — August 18–19, 1966

Southwestern
Albuquerque, New Mexico
November 10–11, 1966

South Pacific
Fresno and Palm Springs, California
February 14–18, 1967

Southern
New Orleans, Louisiana and Asheville, North Carolina — May 26–30, 1967

Northwest
Billings, Montana — July 13–14, 1967

Pacific Northwest
Seattle and Spokane, Washington
September 1–2, 1967

Midwest
Milwaukee, Wisconsin — October 6–7, 1967

Middle Atlantic
Washington, D.C. — January 11–12, 1968
Washington, D.C. — April 5–6, 1968

Attachment No. 4
Letter to Chairman,
Senate Interior Committee
dated April 22, 1970

THE RESEARCH PROGRAM

Manuscripts were prepared on 33 individual subjects as one of a number of sources of information utilized by the Commission in its overall review. The opinions, findings, conclusions and data expressed in these manuscripts are those of the authors and not necessarily those of the Public Land Law Review Commission.

Public Access to Reports

All reports are available for examination, and it is planned to have all of them published and available for purchase by the public. However, the initial manuscripts could not be obtained in sufficient quantity to permit distribution to the public, and they have been undergoing review for correction before publication.

The reports may be examined at the Commission office, 1730 K Street, N.W., Washington, D.C. between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday, until the Commission ceases to exist not later than six months after submission of final report. Members of the Advisory Council and the representatives of the Governors of the 50 states also have copies that can be examined on any basis that is agreeable to them.

Copies of all reports are and will remain available for inspection at the National Archives in Washington, D.C., and its Federal Records Centers in Waltham, Massachusetts; New York, New York; East Point, Georgia; Kansas City, Missouri; Chicago, Illinois; Fort Worth, Texas; Denver, Colorado; San Francisco, California; and Seattle, Washington. In addition, a set of reports is deposited with the Conservation Library, located in the Central Library Building of the City and County of Denver.

Publication Information

The "Digest of Public Land Laws" and the "History of Public Land Law Development" are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Commission's final report will also be on sale by the Superintendent of Documents.

All other reports are being published by the Clearinghouse for Federal Scientific and Technical Information of the Department of Commerce, Springfield, Virginia 22151. As manuscripts are published, announcements are made of their availability.

Order for copies must specifically refer to order numbers indicated, and be sent directly to the Clearinghouse. Unless specified otherwise, prices *per volume* of Clearinghouse publications are $3.00 per paper copy and $0.65 for microfiche.

Manuscripts Published to Date

Digest of Public Land Laws. Prepared by Shepard's Citations, Inc., of Colorado Springs, Colorado. $6.50.

History of Public Land Law Development. Written by Professor Paul Wallace Gates of Cornell University with a chapter by Robert W. Swenson of the University of Utah. $8.25.

Federal Legislative Jurisdiction. Prepared by Land and Natural Resources Division, U.S. Department of Justice. No. PB 185 920.

Withdrawals and Reservations of Public Domain Lands. By Charles F. Wheatley, Jr., Washington, D.C., published in 3 volumes, Nos. PB 187 002, 187 003, 187 004.

Administrative Procedures and the Public Lands. By the University of Virginia. No. PB 187 205.

Fish and Wildlife Resources on the Public Lands. By Colorado State University. Published in two volumes, Nos. PB 187 246 and 187 247.

Public Land Timber Policy. By George Banzhaf & Company, Milwaukee, Wisconsin. Published in four volumes, Nos. PB 187 728, 187 729, 187 730, 187 731.

Federal Public Land Laws and Policies Relating to Intensive Agriculture. Resources portion by South Dakota State University. Legal portion by Kronick, Moskovitz, Tiedemann & Girard, Sacramento, California. Published in four volumes. Legal portion, Volume I, No. PB 188 071; resources portion, Volumes II, III, and IV, Nos. PB 188 061, 188 062, 188 063, and 188 064.

Development, Management and Use of Water Resources on the Public Lands. By Charles F. Wheatley, Jr., Washington, D.C., Charles E. Corker of the University of Washington, Thomas M. Stetson, San Francisco, California, and Daniel J. Reed, Los Angeles, California. Published in two volumes, Nos. PB 188 065 and 188 066.

Outer Continental Shelf Lands of the United States. By Nossaman, Waters, Scott, Krueger & Riordan,

Los Angeles, California. Published in six volumes, Nos. PB 188 714, 188 715, 188 716, 188 717, 188 718, and 188 719.

Forage Resource of the Public Lands. By the University of Idaho. Published in 4 volumes, Nos. PB 189 249, 189 250, 189 251, and 189 252.

Regional and Local Land Use Planning. By Herman D. Ruth +Associates, Berkeley, California. Published in 4 volumes, Nos. PB 189 410, 189 411, 189 412, 189 413.

Manuscripts to be Published [1]

Revenue Sharing and Payments in Lieu of Taxes. By EBS Management Consultants, Inc., Washington, D.C.

Federal Land Laws and Policies in Alaska. By the University of Wisconsin.

Land Grants to States. Prepared by the Commission staff.

Impact of Public Lands on Selected Regional Economies. By Consulting Services Corporation, Seattle, Washington.

Trespass and Unauthorized Use of the Public Lands. By Ireland, Stapleton, Pryor & Holmes, Denver, Colorado.

Nonfuel Minerals. Resources portion by the University of Arizona, Legal portion by Twitty, Sievwright & Mills, Phoenix, Arizona.

Energy Fuel Minerals. Resources portion by Abt Associates, Inc., Cambridge, Massachusetts. Legal portions accomplished as follows:

Federal Competitive and Noncompetitive Oil and Gas Leasing Systems, by Rocky Mountain Mineral Law Foundation, Boulder, Colorado.

Oil Shale on Public Lands, by University of Denver School of Law.

Coal Resources on Public Lands, by University of Utah.

Geothermal Steam Resources on the Public Lands, by the Commission staff.

Outdoor Recreation Use of the Public Lands. By Herman D. Ruth+Associates, Berkeley, California.

Federal Public Land Laws and Policies Relating to Use and Occupancy. By Daniel, Mann, Johnson & Mendenhall, Los Angeles, California.

[1] It is not known in which order the manuscripts will be published. They are in various stages of review and correction.

User Fees and Charges for Public Lands and Resources, by the Commission staff.

Adjustment of Use Rights, by the Commission staff.

Appraisal Techniques and Procedures Utilized in Connection with Actions Related to Federal Public Lands, by Kronick, Moskovitz, Tiedemann & Girard, Sacramento, California.

Organization, Administration, and Budgeting Policy. Accomplished in-house with consultants.

Inventory Information on Public Lands, by the Commission staff.

State Land Policies, by the Commission staff.

Future Demands on the Public Lands

Policy Impacts of Future Demands. Staff analysis with consultant assistant.

Projections of the Consumption of Commodities Producible on the Public Lands of the United States 1980–2000. By Robert R. Nathan Associates, Washington, D. C.

Probable Future Demands on Public Lands. By Robert S. Manthy, East Lansing, Michigan.

Probable Future Demands on the Public Lands for New Cities and Urban Expansion. Papers by Urban America, Inc., Daniel W. Cooke and two consultants.

Disposal Techniques and Procedures. By Raleigh Barlowe, East Lansing, Michigan.

Public Land Policy and the Environment

Parts 1 and 5. Accomplished in-house with assistance of contractors for Parts 2, 3, and 4.

Part 2, Legal and Administrative Framework for Environmental Management of the Public Lands. By Ira Michael Heyman and Robert H. Twiss, Berkeley, California.

Part 3, Environmental Problems on the Public Land. By Rocky Mountain Center of Environment, Denver, Colorado.

Part 4, Environmental Quality and the Public Lands, by Landscapes, Inc., Madison, Wisconsin; and *A General System for Environmental Resource Analysis,* by Steinitz Rogers Associates, Inc., Cambridge, Massachusetts.

Federal Public Land Laws and Policies Relating to Multiple Use of Public Lands, by staff consultants.

Land Acquisitions and Exchanges. By Charles F. Wheatley, Jr., Washington, D. C.

Criteria to Judge Facts to Help Determine Maximum Benefit for the General Public. In-house study.

Attachment No. 5
Letter to Chairman
Senate Interior Committee
dated April 22, 1970

CONSULTANTS

The following persons were consulted in various phases of the research program. In addition, there were many others, too numerous to enumerate, from whom we received advice and counsel. In this latter category we recognize particularly congressional staff members, staff members of the Legislative Reference Service, Library of Congress, and personnel throughout the executive branch of the Government.

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Functions of the Public Land Management Agencies

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

The Bureau of Land Management was created on July 16, 1946, through a Reorganization Plan by consolidation of the General Land Office and the Grazing Service.

The Bureau has exclusive jurisdiction for the management of the lands and resources of some 457 million acres of public land and additional responsibility for administration of mineral resources on approximately 313 million acres where surface administration is in another agency, or the land surface has been transferred to private ownership with a reservation of minerals to the Government.

The Bureau performs functions concerned with the identification, classification, use and disposal of public lands and the development, conservation and utilization of mineral resources. It has responsibility for mineral leasing on the Outer Continental Shelf and the administration of the mining laws on all public lands.

The Bureau acts upon applications and claims for the use of or title to public lands. It administers grazing on the lands under its jurisdiction and is responsible for the survey of all public lands.

Bureau of Outdoor Recreation

The Bureau of Outdoor Recreation was created April 2, 1962. It has responsibility for promoting coordination and development of effective programs relating to outdoor recreation.

The Bureau is responsible for preparing and maintaining a continuing inventory and evaluation of the outdoor recreation needs and resources of the United States; formulating and maintaining a comprehensive nationwide outdoor recreation plan; promoting coordination of Federal plans and activities relating to outdoor recreation; cooperating and providing technical assistance to nonfederal entities; cooperating with and providing technical assistance to Federal departments and agencies; and, under the Land and Water Conservation Fund Act of 1965 administers a program of financial assistance grants to states for the purpose of facilitating outdoor recreation planning, acquisition, and development activities.

Geological Survey—Conservation Division

The Conservation Division of the Geological Survey classifies Federal land as to water storage, waterpower, and mineral value.

The Division supervises mining operations and oil and gas operations on Federal lands, the Outer Continental Shelf, and several Naval Petroleum Reserve lands. It provides the Bureau of Land Management and other Federal agencies with geologic and engineering advice and services for the management and disposition of public domain lands.

The Division maintains production accounts and collects royalties from Federal land mineral leases.

National Park Service

The fundamental objective of the National Park Service, created in 1916, is to promote and regulate the use of national parks, monuments and similar reservations in order to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in a manner which will leave them unimpaired for the enjoyment of future generations.

The National Park Service also provides assistance to the states in the management, operation and development of public parks and recreational-area facilities.

Bureau of Sport Fisheries and Wildlife

The objective of this Bureau is to insure the conservation of the Nation's wild birds, mammals, and sport fish, for both their recreational and economic values.

The primary public land related activities of the Bureau consist of stocking public waters, promoting the best methods of managing wildlife in their natural habitat, the supervision and control of predatory

animals, and the management of approximately 321 national wildlife refuge areas encompassing about 28.5 million acres.

Bureau of Reclamation

The principal function of the Bureau of Reclamation is to construct, locate, operate, and maintain works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the Western states.

The Bureau's primary public land related function is to provide for the settlement of public and acquired lands within Bureau project areas.

DEPARTMENT OF AGRICULTURE

Forest Service

The Forest Service is responsible for promoting the conservation and best use of the Nation's forest lands. The Service administers 154 national forests, together with 19 national grasslands, land utilization projects, experimental forests, and other lands aggregating about 186,500,000 acres.

The Forest Service manages the lands under its jurisdiction for orderly and continuous service and for the maintenance of stable economic conditions in national forest communities. Under the principles enunciated in the Multiple Use and Sustained Yield Act of 1960, the National Forest lands are administered for their several basic products and services—outdoor recreation, range, timber, watershed, fish and wildlife.

The Forest Service also carries on a forest research program and provides assistance to small plants in marketing and efficient processing of forest products.

Soil Conservation Service

The Soil Conservation Service has responsibility for developing and carrying on a national soil and water conservation program in cooperation with landowners and operators and with other agencies of Government—Federal, state, and local.

DEPARTMENT OF DEFENSE

The Department of Defense through the three military departments, Army, Navy, and Air Force, manages substantial areas of withdrawn and reserved federally owned lands. While these lands are primarily managed for defense purposes, nondefense activities such as grazing, timber production and wildlife management are permitted in some areas.

In addition, the Department of the Navy administers the Naval Petroleum and Oil Shale Reserves.

Separately, the Corps of Engineers has responsibility, through the Department of the Army civil works program, for the administration of a number of federally owned areas. Its activities include waterway improvement, flood control, river flow regulation, shore protection and recreation development at civil works projects. It regulates the use of navigable waters of the United States, including the regulation of the construction of objects which might affect navigation on the Outer Continental Shelf.

GENERAL SERVICES ADMINISTRATION

The General Services Administration is responsible for the disposal, by donation, sale, and other methods authorized by legislation, of real property determined to be surplus to the needs of the Federal Government.

ATOMIC ENERGY COMMISSION

In connection with its research and development programs, the Atomic Energy Commission administers a number of substantial areas of withdrawn public domain land. It also provides technical advice and assistance to land management agencies in experimental programs to increase mineral production through the use of atomic devices and controls the use of such devices for this purpose.

FEDERAL POWER COMMISSION

The Federal Power Commission is an independent regulatory agency. Among other things, it issues licenses for the construction and operation of nonfederal hydroelectric power projects on Federal lands or on the navigable waters of the United States.

Whenever an application for a license to construct a project is filed with the Commission, any Federal lands included in the proposed project are reserved, as of the date of the filing of the application, from entry, location or other disposal until otherwise directed by the Commission or Congress (permits or valid existing rights of way granted prior to June 30, 1910 are, however, preserved).

When the Commission determines that the value of any lands reserved for or classified as power sites will not be injured or destroyed for power development by location, entry or selection under the public land laws, the Secretary of the Interior, upon notification of such determination may open the lands to location, entry, or selection under such restrictions as the Commission may determine and subject to a reservation in the United States to enter upon, occupy, and use the land if necessary, in the judgment of the Commission, to a project.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

The Federal Highway Administration is responsible for matters relating generally to the highway mode of transportation.

The Administration administers Federal legislation providing for highway beautification and scenic enhancement on the Federal-aid highway systems. The Administration provides for the survey and construction of forest highway system roads, defense highway and access roads, parkways, and roads in national parks and in other federally administered areas.

Federal Land Acreages

COMPARISON OF TOTAL FEDERALLY OWNED LAND WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968 [a]

State	Total State Land Area	Total Federally Owned Land (All Agencies Combined)		Federally Owned Land Administered by Agencies				
				Department of the Interior				
		Acres	Percent of State	Bureau of Land Management	Fish and Wildlife	National Park Service	Bureau of Reclamation [b]	Bureau of Indian Affairs
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Alabama	32,678,400	1,097,317	3.4	636	9,047	5,068	—	—
Alaska	365,481,600	348,467,343	95.3	295,445,187	18,622,726	6,911,397	5,373 [b]	4,064,579
Arizona	72,688,000	32,432,513	44.6	12,787,929	1,526,977	1,565,873	1,389,920	90,425
Arkansas	33,599,360	3,155,407	9.4	2,309	125,870	5,547	—	—
California	100,206,720	44,393,881	44.3	15,192,493	65,678	4,110,281	1,089,037	220
Colorado	66,485,760	24,152,057	36.3	8,443,254	33,359	526,601	479,703	571
Connecticut	3,135,360	9,303	0.3	—	6	—	—	—
Delaware	1,265,920	38,256	3.0	—	21,467	—	—	—
Dist. of Col.	39,040	11,085	28.4	—	—	7,709	—	—
Florida	34,721,280	3,392,455	9.8	1,093	122,761	1,373,472	—	333
Georgia	37,295,360	2,074,160	5.6	—	388,448	15,480	—	—
Hawaii	4,105,600	397,279	9.7	—	1,767	218,318	—	—
Idaho	52,933,120	33,848,735	63.9	12,132,718	23,025	85,045	452,980	41,355
Illinois	35,795,200	523,994	1.5	—	53,186	—	—	—
Indiana	23,158,400	424,863	1.8	—	1,891	229	—	—
Iowa	35,860,480	211,960	0.6	—	26,076	1,384	63	—
Kansas	52,510,720	666,874	1.3	1,515	21,902	680	94,085	321
Kentucky	25,512,320	1,230,727	4.8	—	61,761	62,152	—	—
Louisiana	28,867,840	1,042,410	3.6	3,089	231,266	111	—	—
Maine	19,847,680	130,278	0.7	—	24,117	32,265	—	—
Maryland	6,319,360	189,700	3.0	—	21,058	21,415	—	—
Massachusetts	5,034,880	70,102	1.4	—	9,963	15,607	—	—
Michigan	36,492,160	3,316,286	9.1	3,249	104,583	539,785	—	4,016
Minnesota	51,205,760	3,408,549	6.7	43,882	283,181	591	44	28,643
Mississippi	30,222,720	1,569,320	5.2	1,237	60,277	28,401	—	229
Missouri	44,248,320	1,882,360	4.3	—	43,163	28,220	—	—
Montana	93,271,040	27,654,289	29.6	8,217,414	497,370	1,154,766	302,546	125,473
Nebraska	49,031,680	728,260	1.5	7,923	145,227	4,341	67,564	170
Nevada	70,264,320	60,725,334	86.4	48,067,092	2,185,228	254,358	1,170,549	7,811
New Hampshire	5,768,960	705,689	12.2	—	39	83	—	—
New Jersey	4,813,440	112,032	2.3	—	22,513	4,562	—	—
New Mexico	77,766,400	26,388,272	33.9	13,269,085	89,858	240,738	197,262	384,595
New York	30,680,960	232,626	0.8	—	17,166	5,277	—	—
North Carolina	31,402,880	1,937,618	6.2	—	109,634	333,753	—	139
North Dakota	44,452,480	2,119,375	4.8	75,120	280,719	69,034	18,930	6,394
Ohio	26,222,080	263,134	1.0	—	7,479	89	—	—
Oklahoma	44,087,680	1,423,669	3.2	8,190	79,653	912	58,158	29,159
Oregon	61,598,720	32,179,932	52.2	15,669,216	456,333	160,895	236,639	1,153
Pennsylvania	28,804,480	597,758	2.1	—	5,291	7,097	—	—
Rhode Island	677,120	7,888	1.2	—	3	—	—	—
South Carolina	19,374,080	1,128,720	5.8	—	138,051	3,983	—	—
South Dakota	48,881,920	3,408,408	7.0	277,834	56,408	135,260	45,808	120,862
Tennessee	26,727,680	1,699,438	6.4	—	10,430	252,863	—	—
Texas	168,217,600	3,003,996	1.8	—	131,620	840,139	61,583	—
Utah	52,696,960	35,060,194	66.5	22,994,581	98,553	561,972	1,512,960	433
Vermont	5,936,640	258,546	4.4	—	4,715	—	—	—
Virginia	25,496,320	2,192,116	8.6	—	16,688	266,105	—	—
Washington	42,693,760	12,570,384	29.4	273,505	119,861	1,137,868	446,537	119
West Virginia	15,410,560	987,811	6.4	—	215	562	—	—
Wisconsin	35,011,200	1,785,830	5.1	14	166,804	—	—	39,417
Wyoming	62,343,040	30,059,522	48.2	17,464,699	35,825	2,309,609	1,055,808	1,076
U. S. Total	2,271,343,360	755,368,055	33.3	470,383,264	26,559,238	23,299,897	8,685,549	4,947,493

COMPARISON OF TOTAL FEDERALLY OWNED LAND WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968 [a] (CONT'D)

State	Federally Owned Land Administered by Agencies						
	Department of the Interior			Department of Agriculture			
	Bureau of Mines [c]	Office of Saline Water [d]	Bonneville Power Administration [e]	Forest Service	Agricultural Research Service	Soil Conservation Service	Commodity Credit Corp.[f]
	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Alabama	3	—	—	631,317	20	—	—
Alaska	2	—	—	20,734,673	16	2	—
Arizona	—	—	—	11,429,833	38	46	—
Arkansas	—	48 [d]	—	2,442,924	—	—	—
California	36 [c]	40	—	19,994,773	564	60	—
Colorado	—	—	—	14,319,757	14,671	—	—
Connecticut	—	—	—	10	—	—	—
Delaware	—	—	—	—	—	—	—
Dist. of Col.	—	—	—	—	412	—	—
Florida	—	—	—	1,075,712	5,468	182	—
Georgia	—	—	19-w	806,063	2,441	341	—
Hawaii	—	—	—	—	—	—	—
Idaho	—	—	81-B	20,347,244	32,744	—	—
Illinois	—	—	—	229,248	21	—	25
Indiana	—	—	—	146,169	—	—	—
Iowa	—	—	—	360	364	1	4
Kansas	115	—	—	107,708	12	182	—
Kentucky	—	—	—	538,893	—	4	—
Louisiana	—	—	—	593,416	161	—	—
Maine	—	—	—	50,016	6	—	—
Maryland	—	—	—	—	10,381	—	—
Massachusetts	—	—	5-w	—	—	—	—
Michigan	—	—	15-w	2,633,127	50	—	—
Minnesota	64 [c]	—	13-w	2,784,143	15	—	2
Mississippi	—	—	—	1,134,495	388	—	—
Missouri	3	96 [d]	—	1,400,811	10	263	17
Montana	—	—	118-B	16,669,099	72,310	—	—
Nebraska	—	—	—	349,543	55,606	—	4
Nevada	23	—	—	5,073,657	—	—	—
New Hampshire	—	—	—	678,807	—	—	—
New Jersey	—	—	2-w	—	28	4	—
New Mexico	5	7	—	9,153,364	200,445	—	—
New York	—	—	—	13,779	1,075	203	—
North Carolina	—	25	—	1,127,418	12	—	28 [f]
North Dakota	12	—	—	1,104,958	1,130	—	—
Ohio	—	—	6-w	127,381	632	—	22
Oklahoma	201	70 [d]	26-w	287,119	11,534	—	—
Oregon	47	—	3,856-B-w	15,471,213	14,608	—	—
Pennsylvania	248	—	—	479,762	32	—	—
Rhode Island	—	—	7-w	—	—	—	—
South Carolina	—	—	—	588,928	468	—	—
South Dakota	—	1	10-c	1,982,433	370	—	7
Tennessee	—	—	—	603,601	554	—	—
Texas	12,409	8 [d]	—	775,375	4,185	2	—
Utah	12	—	—	8,000,169	1	—	—
Vermont	—	—	—	235,558	—	—	—
Virginia	—	—	—	1,495,080	4,136	—	—
Washington	27 [c]	—	7,829-B	9,710,815	173	221	—
West Virginia	45	—	24-c	920,212	—	—	—
Wisconsin	—	—	—	1,478,984	1	—	—
Wyoming	2	—	—	9,165,186	—	14	—
U. S. Total	13,254	295	12,011	186,893,133	435,082	1,525	109

COMPARISON OF TOTAL FEDERALLY OWNED LAND WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968[a] (CONT'D)

Federally Owned Land Administered by Agencies								
Department of Defense						Department of Transportation		General Services Administration
Department of Air Force	Department of Army	Corps of Engineers (Civil Works)	Department of Navy	Atomic Energy Commission	Department of Justice	Coast Guard[g]	Federal Aviation Agency[h]	
(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)
7,640	170,231	57,824	3,250	—	—	148	—	124
134,159	2,266,175	52,791	107,004	—	—	79,438[a]	34,242	70
2,570,855	1,030,843	32,418	3,194	—	695	—	2,306	423
9,378	86,066	482,640	119	—	—	—	1	28
472,871	979,089	82,391	2,382,310	7,606	63	2,289	1,212	854
26,950	181,946	28,338	60,241	30,199	640	—	490	754
115	210	7,175	1,137	10	322	191	—	11
2,807	437	12,806	626	—	—	77	—	2
625	246	333	688	—	334	—	—	254
633,008	1,757	18,944	67,237	99	791	1,640	658	43
11,578	524,987	303,448	10,707	—	182	18	—	210
6,057	106,651	37	62,532	22	3	1,012	397	17
115,225	3,182	42,501	22	572,267	4	—	240	18
4,996	44,913	182,353	2,932	3,740	921	34	13	535
5,194	116,954	87,627	62,841	—	2,632	1	—	995
197	19,682	163,439	7	—	—	3	—	121
42,431	126,623	267,960	1,953	—	487	3	10	70
—	169,377	298,218	139	3,668	270	2	8	40
24,178	116,530	61,845	7,379	—	—	2,446	93	390
14,129	1,093	14	7,594	—	1	463	—	41
7,007	96,991	4,924	22,935	101	—	305	163[h]	1,827
7,619	13,992	16,847	4,367	—	—	591	245	163
9,214	16,376	1,773	627	—	502	1,815	—	62
1,801	3,335	258,786	175	—	2,967	26	8	85
6,210	4,470	291,581	11,253	—	—	12	12	60
10,174	65,218	331,915	57	30	1,377	7	2	681
6,033	6,660	601,908	—	—	22	—	223	155
6,619	33,275	57,502	79	—	—	—	5	16
2,926,492	7,554	671	212,052	817,659	—	—	2,159	13
7,878	149	18,614	16	—	4	16	20	11
3,791	42,359	10,172	19,380	15	—	1,602	6,025	997
96,459	2,659,735	15,851	1	66,110	1	—	399	124
14,326	138,119	13,387	9,651	12,208	1	3,670[g]	306	1,513
3,329	143,057	46,737	142,488	—	770	1,337	—	55
12,023	10	550,854	—	—	—	—	—	80
14,554	24,743	71,855	409	4,964	1,550	155	28	767
9,818	128,076	761,879	44,965	—	3,595	—	—	27
998	17,475	96,452	47,590	—	—	314	824[h]	876
488	26,992	67,051	4,080	200	5,171	4	128	162
45	230	61	7,396	—	—	92	—	3
12,335	53,698	99,938	30,159	200,831	—	167	9	27
247,589	21,289	519,857	—	—	—	—	—	28
42,939	105,877	187,658	3,630	37,523	—	7	18	47
75,329	371,863	631,846	22,702	10,177	2,601	119	61	1,751
924,377	872,621	—	89,067	3,241	—	—	1,877	204
131	12,054	5,982	2	—	—	7	—	28
7,172	158,906	108,273	107,969	—	874	977	12,489[h]	2,806
18,837	350,057	101,358	26,796	369,002	4,418	1,548	18[h]	951
50	340	60,443	2,183	4	511	4	—	109
352	67,971	30,873	1	—	—	869	1	10
7,217	9,625	—	9,483	—	—	—	544	5
8,563,599	11,400,109	7,148,150	3,601,425	2,139,676	31,709	101,409	65,234	18,643

COMPARISON OF TOTAL FEDERALLY OWNED LAND WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968 [a] (CONT'D)

State	Federally Owned Land Administered by Agencies							
	Veterans Administration	Department of Commerce	Department of Health Education and Welfare	Federal Communication Commission	Other Agencies [i]	Post Office Department [j]	Treasury Department [j]	Other Agencies [k]
	(25)	(26)	(27)	(28)	(29)	(30)	(31)	(32)
Alabama	477	74	4	—	1,797	23	—	209,634-t
Alaska	—	131	680	175	8,523	—	—	—
Arizona	349	173	49	132	27	4	1	3-n
Arkansas	448	11	—	—	—	18	—	—
California	1,356	3	37	209	8,080	80	4	2,245-u, c, i
Colorado	653	3,346	—	—	—	16	2	566-n
Connecticut	91	—	—	—	—	25	—	—
Delaware	31	—	—	—	—	3	—	—
Dist. of Col.	47	69	336	—	—	7	15	10-p, h, i
Florida	574	—	16	69	83,783	18	—	4,797-t
Georgia	360	—	210	161	—	30	—	9,477-t
Hawaii	—	185	2	184	—	1	—	94-i
Idaho	76	—	—	—	—	8	—	—
Illinois	815	164	2	—	—	96	—	—
Indiana	285	—	—	—	—	45	—	—
Iowa	222	—	—	—	—	37	—	—
Kansas	730	—	60	—	—	27	—	—
Kentucky	275	—	1,033	—	—	24	75	94,788-t·
Louisiana	203	14	367	—	905	17	—	—
Maine	508	—	7	—	—	20	4	—
Maryland	632	2	1,174	211	554	20	—	—
Massachusetts	498	24	19	—	9	57	—	96-c
Michigan	827	—	7	209	—	49	—	—
Minnesota	752	—	4	—	—	27	6	—
Mississippi	490	—	1	—	20,986	21	—	9,197-t
Missouri	280	—	1	—	—	35	—	—
Montana	149	—	33	—	—	5	5	—
Nebraska	124	40	5	200	—	17	—	—
Nevada	12	—	—	—	—	4	—	—
New Hampshire	35	7	—	—	—	10	—	—
New Jersey	476	54	—	—	—	52	—	—
New Mexico	201	—	57	—	13,970	4	1	—
New York	1,466	74	32	260	—	108	5	—
North Carolina	390	244	1	—	—	32	—	28,169-t, i
North Dakota	71	—	12	—	—	6	22	—
Ohio	998	—	15	322	6,330	75	—	760-i
Oklahoma	24	—	230	—	—	26	—	6-u
Oregon	422	1,005	1	—	—	15	—	—
Pennsylvania	957	9	2	—	—	83	1	—
Rhode Island	40	—	5	—	—	6	—	—
South Carolina	113	—	—	—	—	13	—	—
South Dakota	585	—	53	—	—	14	—	—
Tennessee	686	—	4	—	—	38	—	453,563-t
Texas	1,419	716	455	520	58,737	63	4	312-n
Utah	121	—	—	—	—	5	—	—
Vermont	64	—	—	—	—	5	—	—
Virginia	483	1,146	21	—	7,154	32	—	1,805-t, c
Washington	353	5	27	39	—	20	—	—
West Virginia	340	—	—	—	—	16	—	2,753-n
Wisconsin	498	—	—	—	—	35	—	—
Wyoming	421	—	—	—	—	8	—	—
U. S. Total	21,427	7,496	4,962	2,691	210,855	1,400	145	818,275

See Footnotes on Page 335

PUBLIC LAND AS DEFINED BY SECTION 10, PUBLIC LAW 88–606, WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968 [a]

State	Total State Land Area	All Agencies Combined			
		Public Domain	Acquired	Total Public Land	
				Acres	Percent of State
	(1)	(2)	(3)	(4)	(5)
Alabama	32,678,400	26,832	614,812	641,644	2.0
Alaska	365,481,600	348,450,430	14	348,450,444	95.3
Arizona	72,688,000	32,129,982 [b]	2,187	32,132,169 [b]	44.2
Arkansas	33,599,360	1,073,715	1,529,389	2,603,104	7.7
California	100,206,720	41,905,064	367,598	42,272,662	42.2
Colorado	66,485,760	23,120,200	49,824	23,170,024	34.8
Connecticut	3,135,360	—	—	—	—
Delaware	1,265,920	—	21,467	21,467	1.7
Dist. of Col.	39,040	—	—	—	—
Florida	34,721,280	322,354	1,030,790	1,353,144	4.0
Georgia	37,295,360	—	1,184,922	1,184,922	3.2
Hawaii	4,105,600	—	1,765	1,765	—
Idaho	52,933,120	33,071,381	389,932	33,461,313	63.2
Illinois	35,795,200	448	281,986	282,434	0.8
Indiana	23,158,400	440	146,717	147,157	0.6
Iowa	35,860,480	341	25,577	25,918	0.1
Kansas	52,510,720	27,296	21,180	48,476	0.1
Kentucky	25,512,320	—	600,540	600,540	2.4
Louisiana	28,867,840	21,406	813,248	834,654	2.9
Maine	19,847,680	—	73,468	73,468	0.4
Maryland	6,319,360	—	18,347	18,347	0.3
Massachusetts	5,034,880	—	9,564	9,564	0.2
Michigan	36,492,160	296,597	2,448,487	2,745,084	7.5
Minnesota	51,205,760	1,397,667	1,866,617	3,264,284	6.4
Mississippi	30,222,720	6,290	1,189,401	1,195,691	4.0
Missouri	44,248,320	2,719	1,428,750	1,431,469	3.2
Montana	93,271,040	25,190,968	112,503	25,303,471	27.1
Nebraska	49,031,680	261,548	178,532	440,080	0.9
Nevada	70,264,320	60,568,567 [b]	57,563	60,626,130 [b]	86.3
New Hampshire	5,768,960	—	678,807	678,807	11.8
New Jersey	4,813,440	—	22,513	22,513	0.5
New Mexico	77,766,400	24,812,797	375,357	25,188,154	32.4
New York	30,680,960	—	17,030	17,030	0.1
North Carolina	31,402,880	—	1,230,838	1,230,838	3.9
North Dakota	44,452,480	213,009	268,104	481,113	1.1
Ohio	26,222,080	85	134,513	134,598	0.5
Oklahoma	44,087,680	150,388	242,006	392,394	0.9
Oregon	61,598,720	28,831,196	897,557	29,728,753	48.3
Pennsylvania	28,804,480	—	484,665	484,665	1.7
Rhode Island	677,120	—	—	—	—
South Carolina	19,374,080	—	680,265	680,265	3.5
South Dakota	48,881,920	1,594,227	56,933	1,651,160	3.4
Tennessee	26,727,680	—	612,761	612,761	2.3
Texas	168,217,600	—	789,282	789,282	0.5
Utah	52,696,960	34,551,540	261,504	34,813,044	66.1
Vermont	5,936,640	—	240,238	240,238	4.0
Virginia	25,496,320	—	1,510,861	1,510,861	5.9
Washington	42,693,760	11,078,357	343,131	11,421,488	26.8
West Virginia	15,410,560	—	920,212	920,212	5.9
Wisconsin	35,011,200	9,496	1,579,020	1,588,516	4.5
Wyoming	62,343,040	29,437,421	37,518	29,474,939	47.3
U. S. Total	2,271,343,360	698,552,761	25,848,295	724,401,056	31.9

PUBLIC LAND AS DEFINED BY SECTION 10, PUBLIC LAW 88–606, WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968 [a] (CONT'D)

State	Department of Interior						
	Bureau of Land Management	Fish and Wildlife Service		National Park Service	Bureau of Reclamation [d]	Bureau of Indian Affairs	Other Bureaus
		Public Domain	Acquired				
	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Alabama	636	—	8,383	—	—	—	—
Alaska	295,444,942	18,622,712	—	6,910,496	5,211	4,064,579	2 [e]
Arizona	12,750,681	1,526,976 [b]	—	1,465,257	1,315,579	89,375	—
Arkansas	2,309	4,822	120,586	892	—	—	—
California	15,192,489	1,720	63,900	3,863,707	872,918	—	—
Colorado	8,405,721	4,935	27,985	503,718	423,746	—	—
Connecticut	—	—	—	—	—	—	—
Delaware	—	—	21,467	—	—	—	—
Dist. of Col.	—	—	—	—	—	—	—
Florida	1,093	4,974	117,277	89	—	—	—
Georgia	—	—	388,199	—	—	—	—
Hawaii	—	—	1,765	—	—	—	—
Idaho	12,059,257	9,054	13,667	83,899	326,592	—	2 [f]
Illinois	—	65	53,121	—	—	—	—
Indiana	—	—	1,838	—	—	—	—
Iowa	—	334	25,577	—	—	—	—
Kansas	1,515	—	21,180	—	—	—	—
Kentucky	—	—	61,647	—	—	—	—
Louisiana	3,089	10,800	220,369	—	—	—	—
Maine	—	—	23,917	—	—	—	—
Maryland	—	—	18,347	—	—	—	—
Massachusetts	—	—	9,564	—	—	—	—
Michigan	3,249	2,801	101,576	10,442	—	—	—
Minnesota	43,882	288	200,976	276	—	—	—
Mississippi	1,237	3,278	56,646	—	—	—	—
Missouri	—	—	42,869	—	—	—	—
Montana	6,324,495	398,932	98,074	1,126,892	192,043	—	—
Nebraska	7,923	15,317	129,905	2,003	7,805	—	—
Nevada	48,063,798	2,148,658 [b]	36,546	254,073	1,099,971	1,647	18 [e]
New Hampshire	—	—	—	—	—	—	—
New Jersey	—	—	22,513	—	—	—	—
New Mexico	13,036,237	12,536	76,605	216,950	88,998	48,680	—
New York	—	—	17,030	—	—	—	—
North Carolina	—	—	103,428	—	—	—	—
North Dakota	75,120	12,476	267,584	10,445	907	376	—
Ohio	—	82	7,132	—	—	—	—
Oklahoma	8,190	77,806	1,645	—	509	—	—
Oregon	13,441,001 [c]	246,213	209,994	158,303	200,928	—	52 [f]
Pennsylvania	—	—	5,012	—	—	—	—
Rhode Island	—	—	—	—	—	—	—
South Carolina	—	—	91,337	—	—	—	—
South Dakota	277,834	1,168	55,229	78,737	19,269	—	—
Tennessee	—	—	10,372	—	—	—	—
Texas	—	—	131,176	—	—	—	—
Utah	22,973,519	67,452	29,179	523,230	1,399,663	—	—
Vermont	—	—	4,680	—	—	—	—
Virginia	—	—	15,781	—	—	—	—
Washington	273,505	40,213	78,179	1,082,733	128,941	—	3 [f]
West Virginia	—	—	—	—	—	—	—
Wisconsin	14	427	108,299	—	—	—	—
Wyoming	17,454,822	12,483	22,618	2,271,937	869,345	—	—
U. S. Total	465,846,558	23,226,522 [b]	3,123,174	18,564,079	6,952,425	4,204,657	77

PUBLIC LAND AS DEFINED BY SECTION 10, PUBLIC LAW 88–606, WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968 [a] (CONT'D)

State	Department of Agriculture			Department of Defense			
	Forest Service		Agricultural Research Service	Department of Air Force	Department of Army	Corps of Engineers (Civil Works)	Department of Navy
	Public Domain	Acquired					
	(13)	(14)	(15)	(16)	(17)	(18)	(19)
Alabama	24,888	606,429	—	—	1,160	—	—
Alaska	20,734,659	14	2[g]	128,221	2,259,888	52,580	106,165
Arizona	11,427,646	2,187	—	2,557,661[b]	969,795	23,610	10
Arkansas	1,034,121	1,408,803	—	—	320	31,251	—
California	19,671,909	303,698	—	89,631	679,545	14,679	1,514,446
Colorado	13,696,799	21,839	—	—	3,133	432	56,408
Connecticut	—	—	—	—	—	—	—
Delaware	—	—	—	—	—	—	—
Dist. of Col.	—	—	—	—	—	—	—
Florida	162,199	913,513	—	135,461	14	137	17,225
Georgia	—	796,723	—	—	—	—	—
Hawaii	—	—	—	—	—	—	—
Idaho	19,925,821	376,265	28,643	112,821	3,171	8,588	—
Illinois	383	228,865	—	—	—	—	—
Indiana	440	144,879	—	—	—	—	—
Iowa	—	—	—	—	—	7	—
Kansas	360	—	—	—	24,934	—	—
Kentucky	—	538,893	—	—	—	—	—
Louisiana	238	592,879	—	—	—	7,051	—
Maine	—	49,551	—	—	—	—	—
Maryland	—	—	—	—	—	—	—
Massachusetts	—	—	—	—	—	—	—
Michigan	279,017	2,346,911	—	160	—	207	—
Minnesota	1,118,502	1,665,641	—	—	—	234,709	—
Mississippi	1,740	1,132,755	—	—	35	—	—
Missouri	1,834	1,385,881	—	—	—	75	—
Montana	16,654,670	14,429	71,878	290	138	421,429	—
Nebraska	207,219	48,627	21,251	—	20	10	—
Nevada	5,052,639	21,017	—	2,918,453[b]	7,150	466	202,269
New Hampshire	—	678,807	—	—	—	—	—
New Jersey	—	—	—	—	—	—	—
New Mexico	8,635,017	298,752	200,120	83,402	2,477,783	5,481	—
New York	—	—	—	—	—	—	—
North Carolina	—	1,127,410	—	—	—	—	—
North Dakota	103,530	520	—	—	—	10,155	—
Ohio	—	127,381	—	—	—	—	—
Oklahoma	836	240,361	6,694	—	51,285	1,473	—
Oregon	14,692,316	687,563	14,594	353	8,440	30,724	37,320
Pennsylvania	—	479,653	—	—	—	—	—
Rhode Island	—	—	—	—	—	—	—
South Carolina	—	588,928	—	—	—	—	—
South Dakota	1,205,030	1,704	360	650	1,201	9,518	—
Tennessee	—	602,389	—	—	—	—	—
Texas	—	658,106	—	—	—	—	—
Utah	7,767,844	232,325	—	905,546	820,066	—	89,066
Vermont	—	235,558	—	—	—	—	—
Virginia	—	1,495,080	—	—	—	—	—
Washington	9,445,138	264,952	160	964	27,677	8,564	—
West Virginia	—	920,212	—	—	—	—	—
Wisconsin	8,033	1,470,721	—	—	553	—	—
Wyoming	8,804,982	14,900	—	3,861	9,624	—	9,481
U. S. Total	160,657,810	22,725,121	343,702	6,937,474	7,345,932	861,146	2,032,390

PUBLIC LAND AS DEFINED BY SECTION 10, PUBLIC LAW 88–606, WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968 [a] (CONT'D)

State	Atomic Energy Commission	Department of Justice	Department of Transportation: Coast Guard [h]	Department of Transportation: Federal Aviation Agency	General Services Administration	Veterans Administration	Other Agencies [i]
	(20)	(21)	(22)	(23)	(24)	(25)	(26)
Alabama	—	—	148	—	—	—	—
Alaska	—	—	77,431 [h]	34,030	62	—	9,450
Arizona	—	695	—	2,286	10	209	192
Arkansas	—	—	—	—	—	—	—
California	—	—	1,172	1,115	22	—	1,711
Colorado	24,200	—	—	490	—	618	—
Connecticut	—	—	—	—	—	—	—
Delaware	—	—	—	—	—	—	—
Dist. of Col.	—	—	—	—	—	—	—
Florida	—	—	1,162	—	—	—	—
Georgia	—	—	—	—	—	—	—
Hawaii	—	—	—	—	—	—	—
Idaho	513,239	—	—	218	—	76	—
Illinois	—	—	—	—	—	—	—
Indiana	—	—	—	—	—	—	—
Iowa	—	—	—	—	—	—	—
Kansas	—	487	—	—	—	—	—
Kentucky	—	—	—	—	—	—	—
Louisiana	—	—	228	—	—	—	—
Maine	—	—	—	—	—	—	—
Maryland	—	—	—	—	—	—	—
Massachusetts	—	—	—	—	—	—	—
Michigan	—	—	721	—	—	—	—
Minnesota	—	—	10	—	—	—	—
Mississippi	—	—	—	—	—	—	—
Missouri	—	810	—	—	—	—	—
Montana	—	—	—	200	1	—	—
Nebraska	—	—	—	—	—	—	—
Nevada	817,597	—	—	1,828	—	—	—
New Hampshire	—	—	—	—	—	—	—
New Jersey	—	—	—	—	—	—	—
New Mexico	2,120	—	—	293	—	15	5,165
New York	—	—	—	—	—	—	—
North Carolina	—	—	—	—	—	—	—
North Dakota	—	—	—	—	—	—	—
Ohio	—	—	3	—	—	—	—
Oklahoma	—	3,595	—	—	—	—	—
Oregon	—	—	130	822	—	—	—
Pennsylvania	—	—	—	—	—	—	—
Rhode Island	—	—	—	—	—	—	—
South Carolina	—	—	—	—	—	—	—
South Dakota	—	—	—	—	—	460	—
Tennessee	—	—	—	—	—	—	—
Texas	—	—	—	—	—	—	—
Utah	3,169	—	—	1,864	—	121	—
Vermont	—	—	—	—	—	—	—
Virginia	—	—	—	—	—	—	—
Washington	69,196	4	1,087	—	—	172	—
West Virginia	—	—	—	—	—	—	—
Wisconsin	—	—	469	—	—	—	—
Wyoming	—	—	—	544	—	342	—
U. S. Total	1,429,521	5,591	82,561	43,690	95	2,013	16,518

See Footnotes on Page 335

FOOTNOTES

COMPARISON OF TOTAL FEDERALLY OWNED LAND WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968

[a] Data from GSA real property inventory records for agencies as of June 30, 1968, with minor adjustments.

[b] Except that Alaska Power Administration administers the 5,373 acres in Alaska.

[c] Except that Geological Survey administers 12 acres in California, 1 acre in Minnesota and the 6 acres in Washington.

[d] Except that Southwestern Power Administration administers the 48 acres in Arkansas, the 96 acres in Missouri, the 70 acres in Oklahoma and the 3 acres in Texas.

[e] Agencies and acres administered by each:
- b: Bonneville Power (11,864)
- c: Coal Research (34)
- w: Federal Water Pollution Control (113)

[f] Except that Farmers Home Administration administers the 28 acres in North Carolina.

[g] Except that Federal Railway Administration (Alaska Railroad) administers 38,234 acres in Alaska and St. Lawrence Seaway Development Corporation administers 2,960 acres in New York.

[h] Except that Federal Highway Administration administers 833 acres including the 163 acres in Maryland, 2 acres in Oregon, 633 acres in Virginia and 5 acres in Washington.

[i] Dept. of State, International Boundary and Water Commission, United States and Mexico administers 68,189 acres 27 in Arizona, 11,181 in New Mexico and 56,980 in Texas. National Aeronautics and Space Administration administers the remaining 142,666 acres.

[j] Agencies that have no public land as defined by Section 10, P.L. 88-606.

[k] Agencies and acres administered by each are:
- t: Tennessee Valley Authority, 805,080 acres, including 21,988 in North Carolina and 1,636 in Virginia.
- n: National Science Foundation, 3,634 acres.
- u: Dept. of Housing and Urban Development, 9 acres; including 3 in California.
- c: Central Intelligence Agency, 748 acres, including 483 in California and 169 in Virginia.
- i: U. S. Information Agency, 8,794 acres, including 1,759 in California and 6,181 in North Carolina.
- p: Government Printing Office, 6 acres.
- h: National Capital Housing Authority, 2 acres.
- l: Dept. of Labor, 2 acres.

FOOTNOTES

PUBLIC LAND AS DEFINED BY SECTION 10, PUBLIC LAW 88-606, WITH TOTAL STATE LAND AREAS, AND ACRES BY AGENCY, 1968

[a] For text of Section 10, see Appendix A. Data for column 1 are from Public Land Statistics, 1968, exclusive of inland water; for columns 7, 8, 13 and 14 are from the agencies; other data are from GSA real property inventory records for agencies as of June 30, 1968, with minor adjustments.

[b] Total for public domain (columns 2, 4, and 7 or 16) each contains an excess of approximately 1,878,970 acres because of duplicate reporting as follows:
(1) Approximately 1,053,530 acres in Arizona administered by Fish and Wildlife Service in Cabeza Prieta Game Range and also used by the military are reported for both agencies (col. 7 and 16).
(2) Approximately 825,440 acres in Nevada administered by Fish and Wildlife Service in the Desert Game Range and also used by the military are reported for both agencies (columns 7 and 16).

[c] Excludes 2,071,434 acres of Oregon and California Railroad and 74,547 acres of Coos Bay Wagon Road lands which are included for BLM in GSA data.

[d] Except that Alaska Power Administration administers 5,211 acres in Alaska.

[e] The Bureau of Mines administers the 20 acres in Alaska and Nevada.

[f] Bonneville Power Administration administers the 57 acres in Idaho, Oregon and Washington.

[g] Except that Soil Conservation Service administers the 2 acres in Alaska.

[h] Except that 36,248 acres in Alaska are in Federal Railway Administration (Alaska Railroad).

[i] Includes: NASA, 12,964 acres (Alaska, 8,500; California, 1,675; acres; New Mexico, 2,789); State Dept., International Boundary and Water Commission, U. S. and Mexico, 2,395 acres (Arizona, 19; New Mexico, 2,376); HEW, Public Health Service, 685 acres (Alaska, 649; California, 36); Commerce Department, 301 acres (Alaska, 128, Arizona, 173); Federal Communications Commission, 173 acres in Alaska.

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  Bureau of Land Management
  Bureau of Mines
  National Park Service
  Bureau of Reclamation
  Bureau of Sport Fisheries and Wildlife
U. S. Department of Transportation
  Federal Highway Administration

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